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SUPPLEMENT

1939

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EDITOR'S NOTE

THE numbers in the margin throughout the Supplement refer to the page in the original volume. The volume number is given at the top of each page of the Supplement.

The cases, etc., incorporated are, as far as possible, those up to February, 1939.

VOLUME I
BANKRUPTCY

VOLUME I

BANKRUPTCY

- 2 **Bankruptcy Courts.** Delete "Nantwich and Crewe" and insert "Crewe, Nantwich and Sandbach." Delete "Stalybridge, Ulverston, Barry, Llandelofaur and Ammanford, Clacton and Halstead, Long Eaton, Falmouth and Truro, Woolwich, Horn-castle, Ryde, Pembroke Dock, Narberth and Haverfordwest, Abertillery and Bargoed, and Millom." Add "Haverfordwest, Truro."
- 6 **Married Women.** Married women, whether carrying on business or not, are now subject to the law of bankruptcy and to the enforcement of judgments and orders in all respects as if they were single women. (Law Reform (Married Women and Tortfeasors) Act, 1935.) See *In re a Debtor* (No. 627 of 1936), [1937] 1 Ch. 156; [1937] W.N. 11.)
- 7 **Companies.** As to winding-up of Companies, see Volume 2.
- 9 **Petition.** Petitions need not now be engrossed on parchment. They are now accepted if engrossed on paper (*Law Society's Gazette*, January, 1939).
- 13 **Verification of Petition.** Strictly, only two copies of the affidavit verifying the petition are required, one being retained on the court file and one handed to the petitioning creditor with the sealed copies petition. Under Rule 155 (see Original Volume, pp. 14, 15) service of a copy of the affidavit with the petition is not necessary. Many solicitors however adopt this practice.

- 14 **Service of Petition.** Service of a copy of the affidavit is not strictly necessary (see *supra*).
- 15 **Service of Petition.** Service of a copy of the affidavit is not strictly necessary (see *supra*).
Substituted Service. The affidavit in support of an application for substituted service must show that proper inquiries have been made to ascertain where the debtor is, and that the result of such inquiries is a complete practical impossibility of effecting personal service. (*Re De Cespedes* (1937), 156 L.T. 471. See also *Re a Judgment Debtor* (No. 1539 of 1936), [1937] 1 Ch. 137.)
- 21 **Hearing of Petition.** Bankruptcy is a matter which affects not only the debtor and his creditors but the general public, and a duty is imposed on the court to see that the Act and Rules have been complied with. On a petition by a moneylender, the Registrar before making a receiving order should satisfy himself that sect. 5(2) and Rule 171 and sect. 10 of the Moneylenders Act, 1927, have been complied with. An admission or consent that this has been done is not sufficient. (*In re a Debtor* (No. 591 of 1934), [1935] 1 Ch. 353; 152 L.T. 368.)
- 28 **Married Women.** See 6 *ante*.
- 29 **Acts of Bankruptcy.** A foreigner resident abroad but trading in England does not commit an act of bankruptcy by executing abroad a deed of assignment for the benefit of his creditors generally, and intended to operate according to the law of the country of his domicile. (*In re Debtors* (No. 836 of 1935), [1936] 1 Ch. 622; W.N. 139.)

- 30 **Acquiescence to Deed of Assignment.** See also *Re a Debtor* (No. 11 of 1935); (1935), 80 L.J. 324; [1936] 1 Ch. 165 and *In re a Debtor* (No. 5 of 1936), [1936] 1 Ch. 728.
- 37 **Partners** Where it is desired to found a petition upon a bankruptcy notice addressed to a firm and served upon the individual partner whom it is desired to make bankrupt the notice *must* follow the form of the judgment and be served personally upon the partner whom it is sought to make bankrupt. (*Re a Debtor* (No. 24 of 1935), [1935] W.N. 185), [1936] 1 Ch. 292, 154 L.T. 234.)
- 38 **Married Women.** See 6 *ante*.
- 39 **Application to Set Aside.** See also *Re a Debtor* (No. 523 of 1934), *Ex p. Debtor*, [1935] 1 Ch. 347; 152 L.T. 297.
- 49 **Rescission of Receiving Order.** See also *In re Debtor* (No. 5 of 1936) (No. 2) (1937), 106 L.J. Ch. 225.
- 58 **Examination of Debtor.** The power to order the attendance of the debtor and persons capable of giving information as to his dealings or property is not confined to the duration of the bankruptcy, but survives the bankrupt's discharge. (*Re Coulson, Ex p. Official Receiver*, [1934] 1 Ch. 45; 103 L.J. Ch. 31.)
- 88 **Committee of Inspection.** For an example of the course taken by the court where a member of a committee of inspection had purchased part of the bankrupt's estate, see *Re Bulmer* (1936), 53 T.L.R. 303. It is questionable whether a limited company can be appointed. (*Re Bulmer, supra.*)

- 92 **Trustee.** Maintenance paid to a woman under a consent order made by the Divorce Court in divorce proceedings brought by her against her husband and in which she obtained a decree is income within sect. 51(2) and can therefore be taken in part by the trustee under an order of the court for distribution among her creditors. (*Re Landau*, [1934] 1 Ch. 549; 151 L.T. 190.)
- 112 **Relation Back.** As to moneys paid by a debtor to his solicitor after the date of the receiving order for the costs of an appeal against the order see *In re Debtor* (No. 490 of 1935), [1937] 1 Ch. 92; 156 L.T. 234).
- 117 **County Courts Act, 1888**, sec. 160; now County Courts Act, 1934, sect. 134.
- 122 **Fraudulent Preference.** The court must be satisfied, either by direct evidence or necessary inference, that the dominant motive was an intent to prefer. (*Peat v. Gresham Trust Ltd.*, [1934] A.C. 251; *Re Joseph Samson Lyons*; *Ex p. Barclay's Bank Ltd. v. The Trustee*, [1934] W.N. 195; 152 L.T. 201.)
- 132 **Voluntary Settlement.** A voluntary settlement made more than two years before bankruptcy containing power for the settlor to raise more money than was sufficient to pay his debts at the time he executed the settlement is not void under sect. 42. (*Re Baker* (1935), 80 L.J. 119.)
- 133 **Proof of Debt.** When an unstamped proof of debt in respect of which a fee is payable, is received by a trustee, it is his duty to point out to the creditor

that he has omitted to affix to it the bankruptcy stamp, and to inform him that in the absence of the stamp the proof cannot be dealt with as a proof of debt against the estate. (Practice Direction, 15th December, 1933.)

- 145 **Final Dividend.** The form of the notice of intention to declare a final dividend is valid even though it is not in the form prescribed by the Rules, provided it contains the information required by the Rules. (*In re Pavyer* (1936), 52 T.L.R. 383.)
- 150 **Administration Orders.** See now County Courts Act, 1934, s. 149, and Administration Order Rules, 1936.
- 153 **Insolvent Estates.** Where a petition is presented under sect. 130 and the petitioners have by inadvertence omitted both in the petition and in the proof to value a security of considerable substance, but greatly below the value of the debt, the court has jurisdiction to give leave to amend the petition and the proof by valuing the security. (*Re Small, Westminster Bank v. The Trustee*, [1934] Ch. 541; 103 L.J. Ch. 305.)
- 162 **Discharge.** Sect. 155 provides that if an undischarged bankrupt obtains credit to the extent of £10 from any person without informing him that he is an undischarged bankrupt he is guilty of a misdemeanour. For an ingenious attempt to evade this provision by means of a contract for payment by instalments, see *De Choisy v. Hynes* (1937), 183 L.T.Jo. 289.

I. BANKRUPTCY

7

171 General Title (County Court).

In the

County Court.

No.

of

19

In Bankruptcy.

Re

Ex parte

VOLUME II
COMPANIES

VOLUME II

COMPANIES

- 1 **Appearance.** A company cannot appear in proceedings in person (i.e. by its managing director or other officer) but only by solicitor, who may instruct counsel (see Rules of Supreme Court, Order IV, r. 2 (*note*); *Re London County Council Arbitration* (1897), 13 L.T.R. 254 and *Frinton and Walton U.D.C. v. Walton and District Sand and Mineral Co., Ltd., and Smith*, [1938] W.N. 31; 54 T.L.R. 369.
- 15 **Alteration of Objects.** Alterations of objects which are speculative and outside the original objects of the company will not be confirmed by the court. (*Re Bolsom Brothers* (1928) *Limited*, [1935] 1 Ch. 413; 104 L.J. Ch. 267.)
- 18 **Alteration of Objects.** See 15 *supra*.
- 28 **Qualification Shares.** The court may (under sect. 372 (1)), relieve a director, who has acted without having obtained his qualification shares within the prescribed time, from the penalties imposed by sect. 141. (*Re Barry and Staines Linoleum Ltd.*, [1934] 1 Ch. 227; 103 L.J. Ch. 113.)
- 53 **Restrictions on Transfer.** Where Articles contained a provision that "the directors may decline to register any transfer of shares made by a member who is indebted to the company, or in case the transferee shall be a person of whom the directors do not approve, or shall be considered by them

objectionable, or the transfer shall be considered as having been made for purposes not conducive to the interests of the company, and the directors shall not be bound to specify the grounds upon which the registration of any transfer is declined under this Article," the court would not allow an application to interrogate the directors as to their grounds for declining to register a transfer of shares. (*Berry v. Tottenham Hotspur Football and Athletic Co., Ltd.*, [1935] 1 Ch. 718; 104 L.J. Ch. 342. See also *Duke of Sutherland v. British Dominions Land Settlement Corporation Ltd.*, [1906] 1 Ch. 746 and *Re Gresham Life Assurance Society* (1872), L.R. 8 Ch. 446.)

57 Modification of Rights. All material facts must be disclosed before the holders are called on to vote. (*Hughes v. Union Cold Storage Co., Ltd.* (1934), 78 L.J. 76.)

60 Borrowing. An English Company carrying on business in Scotland may give a floating charge over its property in Scotland—a floating charge is unknown to the law of Scotland. (*Re Anchor Line*, [1937] W.N. 220; 105 L.J. Ch. 330.)

If directors charge the property of the Company for their own purposes, they are acting in breach of their fiduciary duty and the Company is not bound. (*E.M.B. Co., Ltd. v. Dominion Bank* (1937), 81 S.J. 814.)

The requirements of the Moneylenders Act, 1927, s. 6 (1), are satisfied by the signatures of a director and secretary "for and on behalf of the company." (*Re British Games Ltd.*, [1937] W.N. 408; 54 T.L.R. 137, [1938] 1 Ch. 240.)

As to loans by directors, see also *Re Cleadon Trust Ltd.*, [1938] 1 Ch. 660; [1938] W.N. 179; 54 T.L.R. 746.

- 63 **Receiver.** The appointment of a receiver and his power to contract on behalf of the company terminates on the passing of a resolution for voluntary winding-up. (*Mansell & Adams Ltd. and Flower v. W. E. Spencer* (1935), 3 The Solicitor, p. 36.)

A receiver appointed by the court cannot pay commission to an agent who has arranged the sale of property of which he has been appointed receiver without the sanction of the court. (*Re National Flying Services Ltd., Cousins v. The Company* (1935), 52 T.L.R. 37.)

In the case of a company carrying on a public undertaking, the public cannot be inconvenienced by the closing down of the business by the appointment of a receiver. If, however, the company goes into liquidation then the debenture holders are in the position of secured creditors and are entitled to be paid in priority to the unsecured creditors. (*Re Glyn Valley Tramway Co. Ltd.*, [1937] Ch. 465; 106 L.J. Ch. 238.)

A receiver appointed by the court is not liable for rent due under a lease made by the company of which he has been appointed receiver and manager. (*Consolidated Entertainments Ltd. v. Taylor*, [1938] 4 All E.R. 432.) He is, however, liable on a contract made by himself as receiver.

- 65 **Registration of Charges.** Where liquidation of the company is in contemplation and an extension of time for the registration of a charge is applied

for, on the ground of inadvertence, the order extending the time will be in such a form as to give the Liquidator the right to challenge the applicant's right to the order granting the extension. (*Re L. H. Charles & Co. Ltd.*, [1935] W.N. 15.)

- 68 **Special Resolutions.** "Not less than twenty-eight days" means twenty-eight clear days, exclusive of the day of service and exclusive of the day on which the meeting is to be held. An article which provides that the day of service of a notice shall be reckoned in the relevant number of days must be disregarded. (*Re Hector Whaling Ltd.*, [1936] 1 Ch. 208; [1935] W.N. 223; 79 S.J. 966.)
- 69 **Resolutions.** Where preference shareholders have voting rights only when their dividend is in arrear, or their preferential rights are affected, a resolution to allow them to vote on all occasions can only be effective with the consent of the ordinary shareholders. (*Lord St. Davids v. Union Castle Mail Steamship Co. Ltd.* (1934), 78 S.J. 877.)
- 69 **Alteration of Objects.** See 15 *ante*.
- 71 **Dividend.** There is no principle of law preventing a company from paying dividends out of assets representing premiums received on the issue of shares. (*Drown v. Gaumont-British Picture Corporation*, [1937] 1 Ch. 402; 106 L.J. Ch. 241.)
- 82 **Minutes.** Loose-leaf minute books are not admissible as evidence for the purposes of sect. 120 of the Companies Act. (*Hearts of Oak Assurance Co. v. Flower & Sons*, [1936] 1 Ch. 76.)

- 92 **Auditor.** The duties of the Auditor are completed when he sends his Report to the company's secretary, leaving it to the Secretary or Directors of the Company to perform the statutory duty of calling a general meeting.
- 97 **Winding-up.** The High Court has jurisdiction to transfer the proceedings in a winding-up of any company, irrespective of the amount of capital, to any county court having winding-up jurisdiction. (*Re Vernon Heaton & Co. Ltd.*, [1936] 1 Ch. 289; W.N. 10; 52 T.L.R. 156.)
- 98 **Winding-up.** For a further example of equitable grounds for winding-up, see *Re Davis v. Collett Limited*, [1935] 1 Ch. 693; 153 L.T. 329; 104 L.J. Ch. 340, and *contra Re Cuthbert Cooper & Sons Ltd.*, [1937] 1 Ch. 392; 53 T.L.R. 548.)
- 99 **Winding-up.** Under the Companies (Winding-up) Rules, 1929, r. 29, where a petition is presented by a corporation, the affidavit verifying it must be made by some director, secretary or other principal officer thereof. An assistant secretary is not a principal officer for the purposes of this rule. (Practice Note, [1937] W.N. 350.)
- 102 **Winding-up.** A solicitor co-liquidator is not entitled to profit costs in proceedings brought by himself and his co-liquidator in the course of the winding-up. (*Re Gertzenstein*, [1936] W.N. 309; 155 L.T. 573; [1937] 1 Ch. 115.)
- 103 **Winding-up.** Where a voluntary liquidation is superseded by a compulsory winding-up, the remuneration voted to the liquidator in the voluntary

liquidation may be reviewed by the court. (*Re Mortimers (London) Ltd.*, [1937] 1 Ch. 289.)

- 110 Winding-up.** Sect. 214 must be used within its proper limits. (*Re Maville Hose Ltd.* (1938), 82 S.J. 625.) As to the ranking of creditors in the winding-up of an assurance company, see Assurance Companies Act, 1909, ss. 2, 3, 4, and 5; and *Re London General Assurance Co. Ltd.* (1938), 82 S.J. 697.
- 117 Contracts.** The requirements of the Moneylenders Act, 1927, s. 6(1) are satisfied by the signature of a director and the secretary (see *In re British Games*, [1937] W.N. 408; 54 T.L.R. 137).
- 123 Reduction of Share Capital.** As to the powers and appropriate procedure at the meetings of shareholders, see *Carruth v. Imperial Chemical Industries* (1937), 183 L.T.Jo. 242; [1936] 1 Ch. 587; [1937] A.C. 707.
- 124 Reconstruction and Amalgamation.** See also *Re Walker's Settlement*, [1935] 1 Ch. 567; 104 L.J. Ch. 274.
- 125 Schemes of Arrangement.** As to powers of proxy holders at meetings of shareholders called to sanction a scheme of arrangement and the form of the proxy see *Re Waxed-Papers Ltd.*, [1937] W.N. 202; 156 L.T. 452.
- In the absence in the memorandum of powers to transfer the undertaking, the court cannot sanction a scheme of arrangement under sect. 153. (*Re Oceanic Steam Navigation Co. Ltd.* (1938), 82 S.J. 646.)

Where the court sanctions a scheme for the amalgamation of two companies under sect. 153, and makes an order under sect. 154 for the transfer to one company of the property, rights and liabilities of the other company, the property so transferred includes rights under contracts of service, so that in effect an employee of the latter company will automatically become an employee of the transferee company. (*Nokes v. Doncaster Amalgamated Collieries Ltd.* (1937), 82 S.J. 853.)

- 126 **Reconstruction.** As to the operation of the exemption in sect. 55 of the Finance Act, 1927, see *Lever Brothers Ltd. v. Inland Revenue Commissioners*, [1938] 2 All E.R. 808.

FINANCE ACT, 1930, s. 42. As to the restriction on the relief conferred by sect. 42, see Finance Act, 1938, s. 50.

VOLUME III
CONVEYANCING

VOLUME III

CONVEYANCING

- 4 **Middlesex Deeds Registry.** As from the 1st January, 1937, the principles of land registration were compulsorily applied to the whole of the county of Middlesex and from that date the Middlesex Deeds Registry was abolished. Land registration was also made compulsory on sale in the County Borough of Croydon as from 1st January, 1939.
- 8 **Date for Completion.** Where in the correspondence any of the standard conditions of sale (e.g. the Statutory Conditions, the National Conditions, or the Law Society's Conditions) are incorporated, either by implication or by express reference, then the date for completion as fixed by such conditions applies to the transaction. In the Statutory Conditions the date "shall, unless otherwise agreed, be the first day after the expiration of seven weeks from the time when the contract is made, or if that day is a Sunday, Christmas Day, Good Friday or Bank Holiday, the next following working day." (See Original Volume, p. 193.) Somewhat similar provisions appear in the National Conditions and in the Law Society's Conditions.

If no time is fixed at all, the purchase must be completed as soon as the vendor has shown a good title, which he must do within a reasonable time of the date of the contract (*Bellamy v. Debenham*, [1891] 1 Ch. 412). If the vendor does not show a good title within a reasonable time, he cannot bring an action for specific performance of the contract.

It may also be stated here that in addition

to the standard Conditions of Sale mentioned above, many of the local Law Societies have issued forms of particulars and conditions under which some of the Conditions of Sale are adapted to meet the peculiar circumstances of each district.

- 10 **Contracts for Sale.** The standard conditions of sale are prepared so as to be applicable both to sales by private contract or by public auction. When therefore the conditions are utilised for a sale by private treaty the general conditions as to a sale by auction become inapplicable and to save the trouble of deleting all these inapplicable conditions the memorandum (i.e. the contract itself) is altered to make the conditions apply "so far as the same are applicable to a sale by private treaty." Any other clauses in the general conditions which are inapplicable or to which objection is taken should be struck out or amended by means of a special condition.

As regards conditions of sale generally, it should be understood that there are certain stipulations which cannot be inserted. They are void by statute. These stipulations will be found in the Law of Property Act, 1925, sects. 42, 48, and 125 and by the Stamp Act, 1891, sect. 117, a condition framed to preclude objections to title on the ground of absence or insufficiency of stamps on any instrument executed after the 16th May, 1888, or an arrangement for assuming the liability on account of the absence or insufficiency of stamps on any such instrument, or indemnifying against such liability, absence or insufficiency, is void.

A vendor is bound to get in all outstanding legal estates before completion and any stipulation in a contract that any outstanding legal estate shall be traced or got in at the expense of the purchaser, or that no objection shall be taken on account of such outstanding estate, is void (Law of Property Act, 1925, sect. 42 (3)). A condition restricting the purchaser in the choice of his solicitor is similarly void.

Where the description in the contract affords a satisfactory and sufficient identification of the property without a plan, the purchaser cannot require, at the expense of the vendor, a plan to supplement the description. (*In re Sherman's Contract*, [1936] 1 Ch. 755; W.N. 268.)

- 13 **Carbon Copies.** A practice has of recent years developed of submitting drafts of typed documents, e.g. conveyances, leases, requisitions on title, etc., in duplicate. This practice is one to be commended and has the obvious effect of saving much time and labour and it is a pity that it is not generally adopted. So, when submitting say a draft conveyance to the Vendor's solicitor for approval it should be submitted in duplicate. The Vendor's solicitor will then retain the carbon copy for his own use, returning the original draft to the purchaser's solicitor after perusal and approval, or alteration.

Similarly, when local conditions of sale have been utilised for a draft contract a spare copy of the conditions should be sent to the purchaser's solicitor, to enable him to make his own copy. The spare copy so sent should be charged for.

It should be understood, however, that the practice of submitting drafts in duplicate is not intended to deprive the solicitor utilising the duplicate copies of any costs to which he would otherwise be legitimately entitled. So, assuming Schedule II charges being applicable, a solicitor receiving a carbon copy is quite justified in making the usual charge of 4d. a folio for making a copy for his own use, notwithstanding that he in fact received and used a carbon copy supplied to him. The solicitor sending the carbon copy is not entitled to make any additional charge.

- 15 **Deposit.** On a sale by auction the receipt for the deposit is generally given by the auctioneer, though occasionally it is given by the vendor's solicitor, the auctioneer signing the contract as agent for the vendor. When the deposit is paid to an auctioneer he holds it as stakeholder unless it is otherwise provided by the contract, and this is so even though he signs the contract as the agent of the vendor. (See *Furtado v. Lumley* (1890), 54 J.P. 407 and *Ellis v. Goulton*, [1893] 1 Q.B. 350.) If the deposit is paid to the vendor's solicitor, the solicitor is not a stakeholder unless expressly made so by the contract, but he is agent for the vendor. The deposit must be paid over by the solicitor to the vendor on demand and the purchaser has no claim on a solicitor so paying over. (See *Edgell v. Day* (1865), L.R. 1 C.P. 80 and *Ellis v. Goulton* (above).)

On a sale of settled land the deposit should always be received by the vendor's solicitor or the auctioneer "as agent for the Settled Land Act

Trustees" and the money paid into the trustees' Account.

The object of the deposit is to bind the purchaser to complete his contract and he cannot avoid his contract by electing to forfeit his deposit. Notwithstanding forfeiture the vendor can enforce completion. If, however, the vendor is unable to make a good title, the purchaser is then entitled to a return of his deposit with interest, unless it is stipulated that interest shall not be payable. If a purchaser does not complete and the vendor proceeds to a resale, the deposit must be brought into account in ascertaining the deficiency.

An agreement for sale under seal requires a 10s. stamp.

- 16 **Conditions of Sale Generally.** In connection with the preparation of conditions of sale by auction, the same process has to be gone through as in the case of a sale by private treaty. The vendor's title deeds will have to be perused and the "root of title" selected and where the property is sold subject to restrictions already imposed the conditions will so state and a condition is generally inserted that a copy of the restrictions can be inspected before the sale at the offices of the auctioneer or of the vendor's solicitor. On a sale by private treaty a full copy of the restrictions is usually sent with the draft contract even though in fact the purchaser is already fully aware of the restrictions. (See Original Volume, page 22.)
- 17 On the adaptation of particulars and conditions of sale by auction to a sale by private treaty, the

words "so far as the same are applicable to a sale by private treaty" should be added. (See 10 *ante*.)

In addition to the matters mentioned in the Original Volume and the preceding notes, the following additional matters should be noted in connection with Contracts for Sale.

Where the property is let to a tenant, the particulars of sale or contract should state the nature of the tenancy and the rent paid and the purchaser should be given the opportunity of inspecting any important leases. Where the conditions are silent as to tenancies, it is inferred that the purchaser is entitled to vacant possession as from the date fixed for completion. This power to take possession is however one which the purchaser should not lightly undertake. While he may not be liable to pay anything for use and occupation should the title of the vendor turn out to be defective, the taking of possession may be a waiver of objections to the title.

Before a contract for the sale of land is actually exchanged a search should always be made of the register of local land charges. The reason for this is that a resolution by a local authority to adopt a town-planning scheme is (like land tax and a tithe annuity¹) a matter not regarded as an incumbrance which must be disclosed. The purchaser therefore takes subject to them even though they are not mentioned, and as regards a town-planning resolution, this is so, even though the resolution has been registered as a land charge. (See *Re Forsey and Hollebone's Contract*, [1927] 2 Ch. 379.)

If the property sold is held by underlease or under a possessory title, it should be so stated. An

¹ As to tithe annuities see Supplement p. 44.

underlease may generally be recognised by reason of the term being for a term of years less a few days.

- 19 **Title.** The deed with which the title is to commence will, as a rule, be stated in the contract and in the absence of express stipulation, a good title must be shown for thirty years before the date of the contract. It may happen, however, that there is no deed exactly thirty years old, in which case a longer title may be necessary and it is important to bear in mind the position where the property is sold subject to already imposed restrictive covenants. The existence of restrictive covenants is a valid objection to the title, if the purchaser does not know of them at the date of the contract. If the restrictive covenants existed at the date of the deed forming the root of title, then the condition fixing the commencement of the title must refer to them, otherwise the condition is not binding on the purchaser. In such a case the usual practice is to supply a full copy (not an abstract) of the covenants with the draft contract or abstract of title. If it is supplied with the contract, it is generally supplied on the understanding that it is to form part of the abstract. (See Original Volume, p. 22.)

Other requirements as to title which may be mentioned are—

(a) On the sale of an advowson, a title for at least 100 years must be shown, unless otherwise provided.

(b) On the sale of property held under a grant from the Crown, in the absence of a condition, the title must commence with the original grant, and continue with the instruments for thirty years preceding the date of the contract.

(c) Leaseholds. (See Original Volume, p. 19.) Even though the lease is less than one year old, the abstract will still commence with the lease. Unless otherwise provided by the contract, a purchaser of leaseholds cannot call for the title of the lessor. (See Original Volume, p. 53.)

(d) Reversionary interests. On the sale of life or reversionary interests, the deed or other instrument creating the interest and the assignments for thirty years preceding the date of the contract must be abstracted.

Where property is sold in lots, the purchaser of two or more lots is only entitled to one abstract of the common title. (Law of Property Act, 1925, sect. 45 (5).)

The abstract of title is the property of the purchaser if the sale is completed, but if the sale is not carried out then it must be returned to the vendor.

22 **Powers of Attorney.** If the power of attorney was given before 1926, the purchaser can, in the absence of a stipulation to the contrary, require production of the original power. Inspection will then show whether the document was executed in accordance with the terms of the power. Even if the power was given before the commencement of the title, the purchaser can require production or a copy or abstract of the power. (See *Re Copelin's Contract*, [1937] 4 All E.R. 447; 54 T.L.R. 130.)

As regards powers of attorney created on or after 1st January, 1926, registration (as to which, see Original Volume, p. 123) is not necessary if the power only relates to the property sold. In such a case the purchaser is entitled to have the original power handed over to him on completion.

- 23 **Abstracting Wills.** Where the property passes under a general devise contained in the will of a person who died more than thirty years before the date of the contract, and the will is made the root of title, then the general devise must be abstracted. In such a case the will forms a good root of title. In the case of deaths after 1925, the will does not come on to the title at all when (unless the executors are making title before an assent) the probate and assent take the place of the probate.

Equitable Charges. Equitable charges subsisting at the date of sale should be abstracted.

In short, an abstract of title must show that the vendor is entitled to the legal estate intended to be transferred free from encumbrances, except such encumbrances as will be satisfied or over-reached by the conveyance to the purchaser. Every instrument or fact since the commencement of the title affecting the legal estate and which cannot be over-reached should be included. Trust instruments should not be abstracted.

- 24 **Fire Insurance.** In connection with fire insurance, the general effect of a valid contract for sale is that the beneficial interest in the property agreed to be sold passes to the purchaser, and the vendor becomes a trustee for him. The purchaser is entitled to any benefit accruing to the property and is liable for any losses between the contract and the conveyance, though he may have a claim against the vendor for compensation for any losses which the vendor should have prevented. If between the contract and conveyance a house

subject to a contract for sale is burned down, the purchaser will still have to complete his purchase. If the vendor has effected an insurance policy, the purchaser has no claim against the insurance company unless his name has been entered in the books of the company as being interested in the premises covered. He also has no claim against the vendor unless the latter has agreed to hold the policy in trust for the purchaser or unless the case falls within sect. 47 of the Law of Property Act, 1925. Sect. 47 provides that where, after the date of any contract for sale or exchange of property, money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract, the money shall, on completion be held or receivable by the vendor on behalf of the purchaser and paid by the vendor to the purchaser on completion of the sale or exchange, or so soon thereafter as the same shall be received by the vendor. This section, however, has effect subject to any stipulation in the contract and to any requisite consents of the insurers and to payment by the purchaser of a proportionate part of the premium from the date of the contract. These provisions should be carefully noted and in practice the purchaser should always see that his name is entered in the books of the insurance company as being interested in the property under the contract immediately after the exchange of contracts, or effect a new insurance in his own name. When the endorsement is made by the vendor's solicitors on the exchange of the contracts, the endorsed policy should be sent to the insurance company for noting.

- 28 **Production of Deeds.** See also Original Volume, p. 30. By the Law of Property Act, 1925, sect. 45 (4), on a sale of property the following expenses must be paid by the purchaser if he requires them to be incurred for the purpose of verifying the abstract of title—

The expenses of production and inspection of all proceedings of courts, inclosure awards, records, Acts of Parliament, court rolls, deeds, wills, probates, letters of administration and other documents not in the possession of the vendor or his mortgagee or trustee, and the expenses of all journeys incidental to such production or inspection, and

The expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences and information not in the possession of the vendor, or his mortgagee or trustee, and all attested, stamped, office or other copies, or abstracts of, or extracts from, any Acts of Parliament, or other documents aforesaid, not in the possession of the vendor or his mortgagee or trustee, and where the vendor or his mortgagee or trustee retains possession of any document, the expenses of making any copy thereof, attested or unattested, which the purchaser shall require, shall be paid by him.

Subject to the above and to the terms of the Contract, the vendor must produce the documents abstracted for the examination of the purchaser, at his own expense. Although the practice generally is for the vendor to give production at the offices of his Solicitor, production may in fact be given at the residence of the vendor, or at or near the land sold.

29 **Middlesex Deeds Registry.** See 4.

29 **Death Duties.** Where the duties arise before 1926, the abstract of title is defective unless it shows that the duties have been paid, or that none were payable. Proof of payment (or that no duties were payable) must be furnished by the vendor at his own expense. If the purchaser has no notice of the charge, he takes the property free of the duty.

Where the duty arises after 1925, the purchaser of a legal estate takes free from the charge, unless, in the case of unregistered land, the charge has been registered as a land charge (Class D, Law of Property Act, 1925, sects. 16–18) or in the case of registered land, the charge is protected on the register. (Land Registration Act, 1925, sect. 73.)

Proof of payment of succession duty is by production of the receipt, but to prove payment of estate duty, a certificate under sect. 11 (1) of the Finance Act, 1894 should be furnished.

33 **Requisitions on Title.** Requisitions, other than those on the title, must be answered, even though they are out of time.

35 **Searches.** The importance of the case of *De Choisy v. Hynes* (Supplement, p. 6) in relation to searches in bankruptcy should not be overlooked. The object of searching in bankruptcy on a purchase or mortgage of land is to ascertain whether the vendor or mortgagor (*a*) is an undischarged bankrupt and, if so, (*b*) the date he was adjudicated a bankrupt, and (*c*) if the property was

acquired by him before or after adjudication. If the property was acquired by him before adjudication, then he has no title as the property vested in his trustee in bankruptcy at the time of adjudication. A bankrupt may, however, have acquired property in ignorance of his disability in selling as an undischarged bankrupt should his trustee intervene. It is not uncommon for a bankrupt to sell such after-acquired property and a *bona fide* purchaser for value gets a good title if he completes before the trustee intervenes (*Cohen v. Mitchell* (1890), 25 Q.B.D. 262; and Bankruptcy Act, 1914, sect. 47). As to what amounts to intervention, see *Hill v. Settle*, [1917] 1 Ch. 105.

Search should therefore be made in the Land Charges Register and/or in the Bankruptcy Court. There is no need to search in both places: if the bankrupt acquired the property after 31st December, 1925, the Land Charges Register is alone sufficient; but if the property was acquired before 1st January, 1926, then both files should be searched. The file at the Bankruptcy Court must be searched personally, as no official certificates are issued. A personal search at the Land Charges Department should only be made if time does not permit of waiting two days for the certificate.

- 36 **Equitable Mortgages.** Equitable mortgages accompanied by a deposit of deeds need not be registered. The reason for this is that the deposit of the documents gives a sufficient security. (Law of Property Act, 1925, sect. 13.)

Searches. Owing to a recent change in practice, search certificates are not now issued from the

Land Registry on Saturdays. When therefore it is desired to complete a matter on a Monday, advantage should be taken of the facilities under which the result of a search may be transmitted either by telegram or telephone, when the result will be communicated after the closing of the Registers on the Monday.

- 37 **Searches.** Where the property is situate in London, inquiry for notices served under the London Building Act should also be made of the London County Council.

The additional charge of 1s. 6d. only applies if the parcels of land adjoin each other. Otherwise the fee is 5s. for each parcel of land.

County Council Registers. Among the other matters entered in the registers of County Councils are (a) improvement lines for the widening of highways prescribed under the Public Health Act, 1925, (b) building lines prescribed under the Roads Improvement Act, 1925, or under any local Act, (c) Orders declaring existing roads to be "new streets" under the Public Health Act, 1924, and (d) any standard widths adopted under sect. 1 of the Restriction of Ribbon Development Act, 1935, as respects any existing roads, or any proposed road which the County Council are intending to construct. The adoption of a standard width has the effect of sterilising the land comprised within the standard width and on a plan approved by the Minister of Transport, and of preventing access ways being made to such land without the consent of the County Council. On the plan being approved

by the Minister of Transport, the standard width road and particulars will be entered in the County Council's register, and it seems imperative now to search this register, more particularly where land is being sold for building purposes.

- 38 **Middlesex Deeds Registry.** See 4.
- 39 On a sale of land by a limited company, the purchaser has no concern whatever with the capital of the company. His search of the company's file is confined to charges (e.g. debentures, debenture stock or mortgages) affecting the property sold. The Articles of Association should be inspected at the same time and the manner of sealing documents ascertained. With certain exceptions all companies have a statutory power to hold and sell land.
- 48 **Tithe Act, 1936.** As to the form of particulars required to be lodged with the Tithe Redemption Commission, see Supplement, p. 44.
- 49 **Middlesex Deeds Registry.** See 4.
- 53 **Option to Purchase.** While it is perhaps not strictly accurate to say that an option to purchase in a lease *must* be registered, an option is nevertheless an estate contract. A purchaser of premises subject to an option in a lease would, of course, receive notice of the option on his inspection of the lease. If the option is given by a separate document it is then that registration becomes necessary. An option to renew a lease must be registered in all cases.

- 54 **Title.** The statutory prohibition on inquiry into a lessor's title (see Original Volume, p 53) only applies in the case of freehold property. If the intending lessor is himself a leaseholder, the intending lessee can call upon the intending lessor to produce the lease or sub-lease out of which the proposed lease is to be granted, and the assignments for thirty years preceding the date of the agreement to grant the lease. In any case an inquiry should be made (either by letter or marginal note on the draft lease) as to whether the consent of any encumbrancer is necessary.
- 59 **Stamp on Lease.** The lessee is strictly only liable to pay the lessor's costs of the lease and the stamp duty thereon. The lessee must also prepare and lodge the particulars of the lease required by the Finance Act, 1931, if the lease is for a term of seven years or more. (See Original Volume, p. 49.)

Licence to Assign. A licence to assign under seal requires a 10s. stamp. An assignment of a lease, or an underlease, may by the terms of the lease or head lease, require to be registered with the lessor and a registration fee paid. Perusal of the lease itself will of course show whether registration is required.

Surrender of Lease. In addition to surrenders of leases by deed, merger, or effluxion of time, there are also what are known as "surrenders by operation of law." A surrender by operation of law may be said to be effected where any party does, and the other assents to, any act which is inconsistent with the continuance of the lease, but the

giving up of portion of the premises, in consideration of a proportionate reduction of rent, is not of itself a surrender by operation of law. Abandonment of the premises by the tenant, if the landlord has assented, is a surrender by operation of law, and delivery and acceptance of the Key may have a similar effect. It is essential to show that the landlord has assented. The question is generally a difficult one depending on the facts and circumstances of each case.

If a lease is surrendered and a new lease granted to the same lessee, the lessee is entitled to retain the original lease.

On the surrender of a lease by deed, the lessor should investigate the title of the lessee, who may have charged, or even assigned, his interest.

If a surrender of a lease is by deed and there is no consideration, it requires a 10s. stamp but if there is a consideration the stamp must be *ad valorem* on the amount of the consideration, as on a conveyance.

- 62 **Yearly Tenancy.** A notice to quit in the case of a yearly tenancy must expire at the time of the year (i.e. the anniversary), when the tenancy commenced.
- 63 **Recovery of Possession.** As to the recovery of possession of small tenements in Courts of Summary Jurisdiction, see Supplement, p. 186.

Landlord and Tenant Act, 1927. Other provisions in the Landlord and Tenant Act are that in all leases containing a condition, covenant or agreement

against assigning, underletting or parting with possession of demised premises without consent, such covenant, condition or agreement, notwithstanding any express agreement to the contrary, is subject to such consent not being unreasonably withheld, but the landlord may require payment of a reasonable sum for legal and other expenses in connection with the licence or consent. If the lease is for more than forty years and is made wholly or partly in consideration of the erection, or the substantial improvement, addition or alteration of buildings, and the lessor is not a Government department or local or public authority, or a statutory or public utility company, it is also subject to a provision that in the case of any assignment or underletting effected more than seven years before the end of the term, no licence or consent is necessary if notice of the transaction is given to the lessor within six months after the transaction is effected. This latter provision does not apply to an agricultural lease under the Agricultural Holdings Act, 1923, or to a mining lease.

If the lease contains a covenant, condition or agreement against the making of improvements without licence or consent, such covenant (notwithstanding any express provisions) has effect subject to such consent not being unreasonably withheld. This does not, however, preclude the right of the landlord to require, as a condition of the licence or consent, payment of a reasonable sum in respect of damage to or diminution in value of the premises or any neighbouring premises belonging to him and of legal and other expenses in connection with the licence or consent, nor in the

case of an improvement which does not add to the letting value, the right to require reinstatement.

Where a lease contains a covenant against the alteration of the user of the premises without licence or consent, such covenant, if the alteration does not involve any structural alterations, has effect subject to no fine or sum of money in the nature of a fine, whether by way of increase of rent or otherwise, being recoverable by the landlord as a condition of the licence or consent, but he may require payment of a reasonable sum in respect of any damage to or diminution in value of the premises or his neighbouring premises and of legal and other expenses connected with the assignment. The two latter provisions also do not apply to agricultural leases or to mining leases.

By sect. 18, the measure of damages recoverable in respect of a repairing covenant is the injury to the reversion. (*Olympia (Liverpool) Ltd. v. Moss Empires Ltd.* (1938), 159 L.T. 206; 54 T.L.R. 956.)

65 **Mortgages and Charges.** As to the stamp duty on a voluntary transfer of mortgage, see *Anderson v. Inland Revenue Commissioners* (1938), 82 S.J. 991.

66 **Line 13.** For "mortgagee" read "mortgagor."

69 **Equitable Mortgages.** Equitable mortgages may be created by an agreement in writing and in the case of a mortgage of land signed in accordance with the Law of Property Act. Although the document usually by itself charges the land, no special words of charge are strictly required, provided the intention of the parties is clear. An equitable mortgage may also be created by a signed memorandum of deposit of the title deeds, or by a mere

deposit of the deeds, provided that in the latter case the deposit amounts to a part performance of an agreement to give security, and generally the memorandum is under seal to give the mortgagee the statutory powers of sale, etc.

An equitable mortgage of stock, debentures, etc., may be created by a mere deposit of the certificates without any writing.

It was decided in some old cases that the proper remedy of an equitable mortgagee was by foreclosure, but by the Law of Property Act, 1925, sect. 91, he may now ask for a sale, even though there is no memorandum of deposit. If the memorandum is by deed he may also appoint a receiver.

An equitable mortgage under hand only requires a stamp of 1s. for every £100, or fractional part of £100, of the amount secured.

An equitable mortgage cannot be regarded as an admirable form of security, but it is a convenient way of dealing with a temporary loan.

- 72 **Middlesex and Croydon.** As from the 1st January, 1937, land registration became compulsory for the whole of the county of Middlesex, and for the County Borough of Croydon as from 1st January, 1939.
- 76 **Land Registry Charges.** Where the form of Charge prescribed by the Land Registration Act is used, certain covenants are implied. These covenants are for payment of principal and interest, and, where the charge is on *leasehold land*, a covenant that the proprietor of the land (i.e. the registered owner) will pay, perform, and observe the rent,

covenants and conditions reserved by and contained in the registered lease and on the part of the lessee to be paid, performed, and observed and to keep the proprietor of the charge (i.e. the mortgagee) indemnified therefrom. It will be noticed that the implied covenants do not include any covenants to insure and repair, so that in all cases it seems preferable to use a legal mortgage.

- 81 **Inspecting Register.** Arrangements have now been made in the Land Registry whereby photographic office copies of the register can be obtained at a cost of 1s. 6d. for each title number affected. A photographic office copy of the filed plan can also be obtained if desired, at a cost varying, according to the size and complexity of the plan, from 1s. upwards. By the use of office copies of the register, vendors are themselves relieved of the burden of themselves preparing copies of the entries in the land certificate for the use of purchasers, and, as such office copies are themselves admissible in evidence, purchasers are relieved of the burden of having to compare the office copies of the register supplied by the vendor with the land certificate in the vendor's possession or with the register.

On estates being sold in lots, as many office copies of the register and (if required) of the filed plan as there are plots to be sold can, on application, be obtained from the Registry at further specially reduced rates, and where multiple office copies are so issued new editions of the register rendering them out of date will not be opened by the Registry.

- 82 **Searches.** An important point was decided in the

case of *White v. Bijou Mansions Ltd.*, [1937] 1 Ch. 610; [1937] W.N. 256. Here it was decided that an entry in the charges register is notice to the whole world and extends to make an entry against the freehold title binding upon the proprietor under a leasehold title of the same land. In view of this decision, it is imperative that the assignee of a lease should make it a condition of the contract that the entries against the freehold interest be disclosed, because, in the absence of special contract to the contrary, the proprietor under a leasehold title has no right to inspect the freehold title.

Form 94 is now published as two separate forms: (a) affecting searches of the whole, and (b) affecting searches as to part of the land comprised in a registered title and much simplifies the procedure.

86 **Middlesex Registry.** See 4.

96 A mortgagee should search against his mortgagor. The search is perhaps not so necessary when a purchase is being completed contemporaneously with a mortgage (even in this case the mortgagor may have charged his interest under the contract) but it is essential where the mortgagor is already the owner.

98 **Limited Companies.** See also Volume 2.

103 **Declaration of Compliance.** The declaration may be made by the solicitor acting in the incorporation of the company, or a person named in the Articles as a director or secretary. (See Volume 2, p. 34.)

107 **Wills and Codicils.** The provisions of the Inheritance (Family Provisions) Act, 1938, must now be remembered when preparing wills and codicils. This Act is intended to ensure that reasonable provision shall be made by a testator for the maintenance of a surviving spouse and children, and enables an application to be made to the court by such dependant for an order for payment to him out of the net estate of the deceased for his benefit. The time within which application must be made is in general six months from the date on which representation to the deceased's estate for general purposes has been taken out.

107 **Trust for Sale.** The difference between land held on trust for sale and settled land should be borne in mind. See Volume 10.

Trusts for sale are being used in practice to an increasing extent as they avoid the provisions of the Settled Land Act, 1925, as to vesting deeds on the succession of life tenants.

The general rule is that in case of two inconsistent provisions in a will, the latter of the two prevails. The rule giving the preference to words over figures applies only to commercial documents. (*Re Hammond, Hammond v. Treharne*, [1938] W.N. 236; 54 T.L.R. 903.)

109 **Execution of Wills.** Although the court deprecated the practice, a will to which a bedridden and illiterate testator had indicated his signature by pressing his thumb, which had been inked, in the place where a testator usually signs his will, was admitted to probate. The court held that a thumb mark was no worse than a cross in indicating the

testamentary intentions of the testator, and complied with the requirements of the Wills Act, 1837. (*Re I. Finn deceased* (1935), 180 L.T.Jo. 456.)

- 111 **Corporate Executors and Trustees.** Where it is desired to appoint the Public Trustee, or a Bank, or a Trust Corporation, it is the usual practice to submit the draft for approval. In many cases special clauses (e.g. the charging clause) are inserted.
- 114 **Business.** The Public Trustee or Corporate Trustees will not usually carry on a business.
- 116 **Proving a Will.** See also Volume 9 (PROBATE PRACTICE).
- 119 **Partnership.** See also Volume 9 (PARTNERSHIP PRACTICE).
- 124 **Filing at Central Office.** A power of attorney, executed after 1926 and which confers power to dispose of or charge land, or a certified copy, must be filed at the Central Office, unless it relates to a single transaction, when it must be handed over to the purchaser on completion.

As to stamps, filing fees, etc., see Volume 8 (HIGH COURT PRACTICE, p. 37).

Attornment Clauses in Mortgages. Allied closely to the subject of powers of attorney is what is known as the "attornment clause" which sometimes appears in mortgages. Under this clause the mortgagor becomes the tenant of the mortgagee of the mortgaged premises and the mortgagee generally has power under the clause to determine the tenancy

so created at any time without notice. The clause therefore creates the relation of landlord and tenant between the mortgagor and mortgagee and if the mortgagee desires to obtain possession he may sue by specially endorsed writ (Order III, Rule 1), or obtain summary judgment under Order XIV. The taking of proceedings for possession may be equivalent to entering into possession. (See *Moore v. Ullcoats Mining Co. Ltd.*, [1908] 1 Ch. 75; and *Woolwich Equitable Building Society v. Preston*, [1938] 1 Ch. 129.)

As to specially endorsed Writs, see Volume 8, p. 265, and for judgment under Order XIV, p. 270.

An attornment clause is a bill of sale within the meaning of sect. 6 of the Bills of Sale Act, 1878. It therefore does not confer a power of distress unless it is registered.

If a mortgage contains an attornment clause, and the mortgagee sells under his power of sale, the mortgage, if not handed over to the purchaser, must be filed at the Central Office.

144 A contract by the Public Trustee, although under seal, only requires a 6d. stamp.

147 See also Volume 10 (TRUSTS, TRUSTEES AND TRUST ACCOUNTS).

154 See also Volume 6 (GUIDE TO DEATH DUTIES).

163 **Affidavits and Statutory Declarations.** Statutory declarations in support of title are frequently required in conveyancing business. A few examples are—

(a) Identity of land from the descriptions given in old deeds is sometimes not an easy matter,

particularly if there is no plan endorsed. In these cases a statutory declaration by an old inhabitant or some person with local knowledge is obtained. In most contracts there is a provision that the identity of the land must be admitted and any further evidence required by the purchaser will only be required at his expense. Unless the contract provides otherwise, the vendor must supply evidence of identity.

(b) Matters of pedigree are often proved by declaration.

(c) On a sale under an intestacy occurring before 1926 and the grant of administration not being available for production, a declaration that the deceased did not leave a will should always be obtained.

(d) On a sale under a possessory title.

An affidavit as to collection of rents and doing repairs is not sufficient to establish ownership. (See *Re Gilbert and Foster's Contract* (1936), 52 T.L.R. 4.)

175 Change of Name. Enrolment of a deed of change of name is not compulsory, but when it is enrolled two witnesses to the deed and an affidavit of identity are required.

A change of name pursuant to the provisions of a will can only be effected by means of a Royal Licence. The Licence requires a £50 stamp.

178 Powers of Attorney. A power of attorney over the transfer of inscribed stock can usually be obtained and lodged through stockbrokers, and generally requires two witnesses.

On the power being executed and lodged, the name of the transferor-vendor is deleted from the books and that of the transferee-purchaser substituted. The sale is completed in the usual way. What is known as a "Stock Receipt" is then issued to the purchaser but this Receipt is of no value whatever. There is no necessity to lodge a Stock Receipt on a sale.

- 179 Transfers.** The form of transfer of shares may sometimes be found in the Articles of Association of a company, but in most cases the form is what is known as a "common form" transfer. Common form transfers may be purchased at any Law Stationers and many solicitors have their own supplies printed. Whether a "common" or "special" form is required can also be ascertained by reference to the Stock Exchange Year Book.

On lodging a transfer for registration, the stock or share certificate must also be lodged. If the transfer is of part of a holding, a new Certificate will be issued to the transferee, and a "balance" certificate to the transferor. Some companies on receiving a transfer for registration issue a "Transfer Receipt" which must be exchanged for the new Certificate on a stated date.

- 183 Registration Fees.** The amount of a registration fee can also be ascertained by reference to the Stock Exchange Year Book.

Tithe Act, 1936. By the provisions of the Tithe Act, 1936, tithe rentcharge and extraordinary tithe rentcharge were extinguished and in lieu thereof tithe redemption annuities were created.

The annuities are charged on the land. Under the Act, where an estate or any interest in any land on which an annuity is charged is disposed of or an interest created so as to bring about a change in ownership of the land, the owner immediately before the execution of the instrument whereby the estate or interest was disposed of or created must within *one month thereof* furnish to the Tithe Redemption Commission, the name and address of the new owner. See also the Tithe Redemption Annuities Rules, 1936. It seems that a tithe annuity is an incumbrance and must therefore be disclosed.

- 187 **Mining Practice.** Legislation has now been passed for the "unification" of coal mines (Coal Act, 1938). As a necessary preliminary to this step, the Coal (Registration of Ownership) Act, 1937, provided for the registration of proprietary interests or groups of proprietary interests in coal and mines of coal.

Applications for registration must be sent to the Registrar, Coal Commission, Hobart House, 36-42 Grosvenor Place, London, S.W.1. The Rules made under the Act, some general notes thereon, and the necessary Forms may be obtained from H.M. Stationery Office.

The provisions of the Coal Act, 1938, are too complicated to be discussed here. Claims for compensation must be lodged with the Coal Commission before the 1st July, 1939. The necessary forms are obtainable from the Commission.

VOLUME IV
COSTS

VOLUME IV

COSTS

- 14 **Taxation.** The reduction of one-sixth must be of taxable items, i.e. the work done must be within the retainer. (See *In re Taxation of Costs, In re a Solicitor*, [1936] W.N. 76.)

LINE 28. For £200, read £150.

- 33 **General Order, 1932.** See 35.

- 35 **General Order, 1936.** Whereas by the General Order made in pursuance of the Solicitors' Remuneration Act, 1881, which came into force on the 1st January, 1883 (in this Order called the Order of 1883), certain provisions were made with respect to the remuneration of a solicitor in non-contentious business:

And Whereas by the Solicitors' Remuneration Act General Order, 1919 (in this Order called the Order of 1919), and the Solicitors' Remuneration Act General Order, 1925 (in this Order called the Order of 1925), the remuneration of solicitors for non-contentious business was increased by $33\frac{1}{3}$ per centum:

And Whereas in consequence of financial necessity reductions were made in the remuneration of certain persons in His Majesty's Service by an Order in Council made under the National Economy Act, 1931:

And Whereas it was desirable that reductions

of a like nature should be made in the remuneration of solicitors and by the Solicitors' Remuneration Order, 1932 (in this Order called the Order of 1932), the percentage increase directed by the Orders of 1919 and 1925 was reduced from $33\frac{1}{3}$ per centum to 20 per centum:

And Whereas the amount by which the remuneration of persons in His Majesty's Service was so reduced as aforesaid has been restored and it is desirable to restore the amount by which the remuneration of solicitors was so reduced.

Now, therefore, We the Right Honourable Douglas McGarel Viscount Hailsham, Lord High Chancellor of Great Britain, The Right Honourable Gordon Baron Hewart, Lord Chief Justice of England, The Right Honourable Robert Alderson Baron Wright, Master of the Rolls, Sir Harry Goring Pritchard, Knight, President of the Law Society, and John William Cocks, Esquire, President of the Incorporated Law Society of Liverpool, being the persons authorised by Section 56 of the Solicitors Act, 1932, do hereby by virtue of the powers vested in us by the said Act and of every other power enabling us in that behalf order and direct as follows—

1. The Order of 1932 is hereby revoked.
2. The remuneration of a solicitor in matters affected by the Orders of 1883, 1919 and 1925 shall be reckoned as if the Order of 1932 had not been made, and as if the Orders of 1919 and 1925 had not been amended or revoked, and the General Order of 1883 shall have effect accordingly.
3. This Order shall come into operation on the

13th day of April, 1936, and shall not refer to business transacted or undertaken (respectively) before the 13th day of April, 1936.

4. This Order may be cited as the Solicitors' Remuneration Order, 1936.

The effect of this Order is to restore the $33\frac{1}{3}$ per cent increase where the business is undertaken, or transacted, on or after the 13th April, 1936.

38 The $33\frac{1}{3}$ per cent increase is restored to the miscellaneous additional fees by the General Order of 1936.

39 The $33\frac{1}{3}$ per cent increase is restored to the miscellaneous additional fees by the General Order of 1936.

45 **Minimum Fees.** £6 13s. 4d. or £4 where business undertaken on or after 13th April, 1936.

46 **Schedule II.** Attending appointing Conference with Counsel—

If Counsel's fee One guinea 3s. 4d.

If more and under Five guineas 6s. 8d.

(See Original Volume, p. 255.)

49 **Telephone.** See also Masters' Practice Notes (Original Volume, p. 332).

50 **Registered Land.** Land registration became compulsory for the whole of the County of Middlesex as from the 1st January, 1937.

55 **Registered Land Order, 1936.** We, the Right Honourable Douglas McGarel Viscount Hailsham, Lord

High Chancellor of Great Britain, The Right Honourable Gordon Baron Hewart, Lord Chief Justice of England, The Right Honourable Robert Alderson Baron Wright, Master of the Rolls, Sir Harry Goring Pritchard, Knight, President of the Law Society, John William Cocks, Esq., President of the Incorporated Law Society of Liverpool, and Sir John Stewart Stewart-Wallace, Chief Land Registrar, being the persons authorised by Section 56 of the Solicitors Act, 1932, do hereby by virtue of the powers vested in us by the said Act and of every other power enabling us in that behalf order and direct as follows—

1. The Solicitors' Remuneration (Registered Land) Order, 1932, is hereby revoked.

2. The Solicitors' Remuneration (Registered Land) Order, 1925, shall have effect as if the Solicitors' Remuneration (Registered Land) Order, 1932, had not been made.

3. This Order shall come into operation on the 13th day of April, 1936, and shall not apply to business transacted or undertaken (respectively) before the 13th day of April, 1936.

4. This Order may be cited as the Solicitors' Remuneration (Registered Land) Order, 1936.

Dated the 11th day of March, 1936.

This Order having lain before both Houses of Parliament for one month in accordance with sect. 56 (4) of the Solicitors Act, 1932, duly came into operation and the effect is to restore the 33½ per cent increase in the same way as for unregistered land.

57 **Increase of Scale.** £3 3s. plus the authorised increase. See the Registered Land Order, 1936, *supra*.

58 Registered Land Order, 1936. See *supra*.

62 **Manorial Incidents. THE SOLICITORS' REMUNERATION (MANORIAL INCIDENTS) ORDER, 1936.**

We, the Right Honourable Douglas McGarel Viscount Hailsham, Lord High Chancellor of Great Britain, The Right Honourable Gordon Baron Hewart, Lord Chief Justice of England, The Right Honourable Robert Alderson Baron Wright, Master of the Rolls, Sir Harry Goring Pritchard, Knight, President of The Law Society, and John William Cocks, Esquire, President of the Incorporated Law Society of Liverpool, being the persons authorised by the fourteenth Schedule to the Law of Property Act, 1922, do hereby by virtue of the powers vested in us by the said Act and of every other power enabling us in that behalf order and direct as follows—

1. The following amendments shall be made in the Solicitors' Remuneration (Manorial Incidents) Order, 1926—

(1) The following Rules shall be inserted after Rule 1 and shall stand as Rules 1A and 1B—

“1A. This Order shall apply to business in respect of the negotiation for and completion of an agreement for compensation in respect of manorial incidents which have been extinguished by the expiration of time as it applies to business in respect of the negotiation for and completion of the extinguishment of manorial incidents.

“1B. The remuneration of a Solicitor to a lord or tenant having the conduct of business in respect of an application to the Minister

under Section 140 of the Act shall be that prescribed in the Schedule hereto:

Provided that where an application is made for higher remuneration, the Minister shall, unless he is of opinion that the remuneration prescribed in the Schedule hereto is adequate, direct that the remuneration shall be regulated in accordance with paragraph (j) of Rule 1 of this Order."

(2) In the Schedule the following three items shall be substituted for the first item—

	Lord's Solicitor	Tenant's Solicitor
	£ s. d.	£ s. d.
Where the compensation does not exceed £5	1 0 0	1 0 0
Where the compensation exceeds £5 but does not exceed £10	2 0 0	1 10 0
Where the compensation exceeds £10 but does not exceed £20	3 0 0	2 10 0

2. Paragraph (j) of Rule 1 of the Solicitors' Remuneration (Manorial Incidents) Order, 1926, shall have effect as if the Solicitors' Remuneration Act General Order, 1919, and the Solicitors' Remuneration Act General Order, 1925, had not been revoked or amended by the Solicitors' Remuneration Order, 1932.

3. This Order may be cited as the Solicitors' Remuneration (Manorial Incidents) Order, 1936, and the Solicitors' Remuneration (Manorial Incidents) Order, 1926, shall have effect as amended by this Order.

Dated the 21st day of May, 1936.

63 **Tithe Act, 1936.** Charges can be made (additional to scale where scale is applicable) for preparing

the notice of change of ownership required by the Tithe Act, 1936, and lodging it with the Tithe Redemption Commission.

64 **Precedent 1.** See 63.

68 **Precedent 5.** See 63.

72 **Increase of Scales.** For "13th October, 1932" read "12th October, 1932."

82 **Settled Land Grants.** The charges for obtaining Grants in respect of settled land should be made in accordance with Schedule II of the Remuneration Order of 1882.

89 **Rule 103 (3).** In sub-paragraph (c) after the words "October, 1932" insert "and before the 1st day of June, 1936."

After sub-paragraph (c), add as sub-paragraph (d)—

"(d) If done after the 31st day of May, 1936, by 33½ per centum."

(Bankruptcy Amendment (No. 1) Rules, 1936.)

119 **Scales Allowed.** See now County Court Rules, 1936, Appendix B, p. 69 *et seq.*, *post.*

120 **Order LIII.** Order LIII. See now County Court Rules, 1936, Order XLVII, *post.*

143 **Increased Costs.** Rule 50 (1) (2). The percentage of increase in Solicitors' costs under Column B or Column C of the Higher Scale shall be restored to the rate in force before the 12th day of October, 1932, and accordingly in Order LIII, Rule 50 the expression "33½ per centum" shall be substituted for the expression "25 per centum."

(The County Court (Solicitors' Costs) Rules, 1936. See now Order XLVII, Rule 41, p. 66, *post.*)

ORDER XLVII

(AS AMENDED BY COUNTY COURT (No. 1) (No. 2) AND
(No. 3) RULES, 1938)

PART I

General

1. *Discretion.* Subject to the provisions of any Act or Rule, the costs of proceedings in a county court shall be in the discretion of the court.

Provided that nothing in this Rule shall deprive an executor, administrator, trustee or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules acted upon in the Chancery Division of the High Court.

2. *Scales of Costs.* The Scales of Costs in Appendix B shall have effect for the purpose of regulating the costs of proceedings in a county court subject to and in accordance with the Rules of this Order and the directions contained in the Scales of Costs.

3. *Taxing Officer.* The registrar shall be the taxing officer of the court of which he is registrar.

4. *Enforcement.* An order for payment of costs may be enforced in like manner as any other order of a county court for the payment of money.

PART II

As to Scale

5. *Application of Scales.* (1) For the regulation of solicitors' charges and disbursements other than court fees there shall be a Lower Scale and

three Higher Scales, namely, Scale A, Scale B and Scale C.

(2) The Scale of Costs applicable to a sum of money shall be as follows—

Sum of Money	Scale Applicable
Exceeding £2 and not exceeding £5	Lower Scale, Column 1
„ £5 „ „ £10	Lower Scale, Column 2
„ £10 „ „ £20	Scale A
„ £20 „ „ £50	Scale B
„ £50	Scale C

(3) Where the sum of money does not exceed £2, no solicitor's charges shall be allowed, unless a certificate is granted under Rule 13 of this Order.

6. *Recovery of Money.* (1) Subject to Rules 7, 8, 9, and 13 of this Order, the Scale of costs in an action for the recovery of a sum of money only shall be determined—

(a) as regards the costs of the plaintiff, by the amount recovered; and

(b) as regards the costs of the defendant, by the amount claimed; and

(c) as regards costs payable to a third party, by the amount claimed against him; and

(d) as regards costs payable by a third party, by the amount recovered against him.

(2) This Rule shall not apply to actions under the equity jurisdiction of the court, or to admiralty actions or actions in which the title to hereditaments comes into question.

7. *Counterclaim.* (1) Subject to the next succeeding paragraph, Rule 6 of this Order shall apply to a counterclaim as it applies to a claim.

(2) Where in one action a claim for a sum of money only and a counterclaim for a sum of money only are tried—

(a) if the plaintiff is awarded costs on both claim and counterclaim, the costs shall be on the Scale applicable to the amount which he recovers on the claim, but if such amount is less than the counterclaim, the costs subsequent to the filing of the counterclaim shall be on the scale applicable to the amount of the counterclaim; and

(b) if the defendant is awarded costs on both claim and counterclaim, the costs shall be on the Scale applicable to the amount which he recovers on the counterclaim or the amount of the plaintiff's claim, whichever is the larger, but the costs prior to the filing of the counterclaim shall be on the Scale applicable to the amount of the claim:

Provided that the costs of work done solely in connection with the claim shall be on the Scale applicable to the claim and the costs of work done solely in connection with the counterclaim shall be on the Scale applicable to the counterclaim.

8. *Where money paid into Court.* (1) Where money in court is accepted in satisfaction of the cause of action in respect of which it was paid, and another cause of action remains to be tried, then subject to the next succeeding paragraph the costs subsequent to the date of payment into court shall be determined by the amount recovered or claimed in respect of the cause of action remaining to be tried.

(2) Where money is paid into court without a denial of liability and without a plea of tender, and the plaintiff does not accept it in satisfaction of his claim or of the cause or causes of action in respect of which it was paid, the costs subsequent to the date of payment into court shall, unless the court otherwise orders, be taxed on the Scale applicable to the amount remaining in dispute or unpaid. Provided that nothing in this paragraph shall deprive a plaintiff of costs on Column 1 of the Lower Scale where but for this paragraph he would have been entitled to receive costs.

(3) Nothing in this Rule shall limit the discretion of the judge as to Scale in a case to which Rule 15 of this Order applies.

9. *Action transferred from High Court.* (1) Where proceedings have been transferred from the High Court to a county court and the amount remaining in dispute at the date on which the registrar receives the documents referred to in Section 74 of the Act is less than the amount originally claimed, the costs incurred after that date shall be taxed on the Scale and subject to the Rules applicable to the costs of an action commenced in a county court to recover the amount so remaining in dispute.

(2) Nothing in this Rule shall limit the discretion of the judge as to Scale in a case to which Rule 15 of this Order applies.

10. *Detinue, etc.* Subject to Rule 13 of this Order, the costs in an action for the recovery of property other than land or money, shall be on the Scale applicable to an action for the recovery of a sum of money equal to the value of the property plus the amount of the damages (if

any), and the judge may determine the value of the property for the purpose of this Rule.

11. *Interpleader*. (1) Subject to Rule 13 of this Order, the Scale of Costs in interpleader proceedings under an execution shall be determined—

(a) as regards the costs of the claimant, by the amount of the value of the goods to which his claim is allowed plus the amount of the damages (if any) awarded; and

(b) as regards the costs of the execution creditor, by the amount of the value of the goods seized plus the amount of damages (if any) claimed; and

(c) as regards the costs of the registrar, by the amount of the damages claimed.

(2) In other interpleader proceedings the judge may award costs on such Scale as he thinks fit.

12. *Garnishee proceedings*. Subject to Rule 13 of this Order, the Scale of Costs in garnishee proceedings shall be determined—

(a) as regards the costs of the judgment creditor, by the amount recovered against the garnishee; and

(b) as regards the costs of the garnishee or the judgment debtor, by the amount claimed by the judgment creditor.

13. *Importance to class or difficult question of law*. In any proceedings in which the judge certifies that the determination of the question in dispute was of importance to a class or body of persons or involved a difficult question of law, or that the decision of the court affects issues between the parties beyond those directly involved

in the proceedings, he may award costs on such scale as he thinks fit.

14. *Companies Act, 1929.* The costs of proceedings under the Companies Act, 1929, other than proceedings which are regulated by the Companies (Winding-up) Rules, 1929, shall be on the Scale of costs applicable to similar proceedings in the High Court.

15. *Other proceedings.* In any proceedings to which Rules 6, 7, 10, 11, 12 and 14 of this Order do not apply, the judge may award costs on such Scale as he thinks fit.

PART III

Items of Costs

16. *Allowance or disallowance of items by judge.* The judge may in any action or matter direct the registrar to allow or disallow on taxation any item in the Scales of Costs.

17. *Unnecessary items to be disallowed.* Subject to any direction of the judge, no item in the Scales of Costs shall be allowed on taxation if the registrar is of opinion that it was not necessary to do the work or incur the expense to which the item relates.

18. *Counsel on Lower Scale.* (1) Where costs are on the Lower Scale, no fee for Counsel shall be allowed on taxation unless the judge, or, if the action or matter is heard by the registrar, the registrar, certifies that the case is fit for counsel.

(2) Where the judge or registrar so certifies, he may also direct which of the fees in item No. 17 of the Lower Scale is to be allowed.

19. *Counsel in interlocutory application.* Where costs are on one of the Higher Scales, no fee for counsel shall be allowed on taxation in respect of the hearing of an interlocutory application, unless the judge or registrar before whom the application is heard certifies that the application is fit for counsel.

20. *Counsel where claim admitted.* In an action for the recovery of a sum of money only where the defendant has admitted the whole or part of the claim within the time limited by Order IX, Rule 1 (1) or Order X, Rule 1, and judgment is given for the plaintiff for no more than the amount admitted, no fee for counsel with brief shall be allowed, unless the judge otherwise orders.

21. *Increased fee for Counsel.* (1) If in any particular case the judge is satisfied that the fee for counsel ought not to be limited to the amount appearing in the Scale and certifies to that effect at the hearing, the fee to be allowed on taxation shall be such larger sum as the registrar thinks reasonable.

Two or more Counsel. (2) Where the costs of any proceedings are on Scale B or Scale C, the judge may certify that the proceedings are fit for the employment of more counsel than one.

Brief and conducting cause. (3) If in any particular case the judge is satisfied that the solicitor's charge for taking instructions for brief to counsel on trial or arbitration or reference, or the solicitor's charge for attendance at court and conducting the cause without counsel, ought not to be limited to the amount appearing in the scale and certifies to that effect at the hearing, the fee to be allowed on taxation shall be such larger sum as the

registrar thinks reasonable. (*Paragraph (3) introduced by County Court (No. 2) Rules, 1938, and came into operation 1st September, 1938.*)

22. *Plans, etc.* (1) There may be allowed for the preparation of any plan, drawing, chart or model, and of any copies thereof prepared for the purpose of any action or matter, the sum reasonably paid for the same not exceeding, unless by order of the judge, the sum mentioned in the Scale on which the costs are being taxed.

(2) A person called at the hearing of any action or matter only to prove the correctness of a plan, drawing, chart or model may be allowed for his attendance the sum prescribed by Appendix C, as compensation for loss of time for a person of the class to which he belongs and not a fee as an expert witness.

23. *Where no provision in Scale.* Where costs are taxed on Scale A, B, or C, in a matter for which no provision is made in the Scale, reasonable costs may be allowed on taxation not exceeding those fixed by the Scale for proceedings of a similar nature.

24. *Scale items only allowable.* Subject to Rule 23 of this Order no item shall be allowed on taxation between party and party which is not contained in the Scales.

25. *Apportionment of costs.* Where judgment is given with costs against two or more defendants separately, the registrar may, subject to any direction of the judge, apportion any item of costs between the defendants as he thinks fit.

26. *Solicitor in person.* Where a solicitor who is a party to the proceedings acts in person and is awarded costs, he shall be entitled on taxation to

the same costs as if he had employed a solicitor, except in respect of items which the fact of his acting in person renders unnecessary.

27. *Where counsel disallowed.* Where a party appearing by counsel is awarded costs, but the costs of employing counsel are not allowed, he may be allowed such costs as he might have been allowed as if he had appeared by a solicitor and not by counsel.

28. *Sale of real property.* Where any real property is directed to be sold, the ordinary conveying charges shall be allowed.

PART IV

Allowances to Witnesses and Parties

29. *Compensation for loss of time.* Where on the hearing of an action or matter a person attends the court as a witness of fact, or as a witness producing a document, or as a party to the action or matter, he may be allowed as compensation for loss of time such sum as the judge or registrar thinks reasonable, not exceeding the sum prescribed by Column 2 of Appendix C for a person of the class to which the witness or party belongs.

30. *Expert witnesses.* (1) Where a person attends the court to give in evidence his opinion as an expert witness, he may be allowed a fee for attending the court, and, in addition, if allowed by the judge or registrar, a fee for qualifying to give evidence.

(2) The fee for qualifying to give evidence shall be such sum as the registrar thinks reasonable, not being more than 3 guineas, and the fee for attending the court shall be such sum as the

registrar thinks reasonable, not being more than 8 guineas nor less than the sum appearing in Appendix C as compensation for loss of time for a person of the class to which the expert witness belongs:

Provided that if in any particular case the judge is satisfied that the fee for qualifying to give evidence or for a report in writing or for attending the court ought not to be so limited, the fee shall be such sum as the judge directs. (*Proviso as amended by County Court (No. 2) Rules, 1938.*)

(3) The judge or registrar may, if he thinks fit, allow the fee for qualifying to give evidence, notwithstanding that the witness does not attend the trial.

(4) Where a report in writing has been obtained from an expert witness who is not entitled to a qualifying fee, the registrar may, if he thinks such a report was reasonably necessary, allow a fee of one guinea therefor.

(*Paragraph 4 introduced by County Court (No. 2) Rules, 1938, which came into operation on 1st September, 1938.*)

31. *Travelling and hotel expenses.* There may be allowed in respect of a witness or party who has attended the hearing, in addition to any sum allowed under Rule 29 or Rule 30 of this Order, any expenses which the witness or party has actually and reasonably incurred in travelling to and from the court or in staying in an hotel.

32. *Attendance in more than one action.* Where a witness or party attends the court in respect of two or more actions or matters, the sum which might be allowed to him under Rule 29 or Rule 31 of this Order in respect of one action or matter

may be apportioned between the several actions or matters.

33. *Witness not called.* Allowances may be made to a witness whether he was called or not, if his attendance was necessary.

34. *Seamen detained.* A seaman necessarily detained on shore for the purpose of an action or matter may be allowed such sum as the registrar thinks reasonable in respect of such detention.

PART V

Taxation and Review

35. *When taxation required.* In every action or matter in which one party is liable to pay any costs incurred by any other party, then except as provided in the next two succeeding Rules of this Order, the costs shall be taxed.

36. *Fixed costs.* (1) Appendix D to these Rules shall have effect for the purpose of showing the items and total amount of solicitor's charges which, if all the items have been earned, may according to the Scales of Costs be allowed in the several cases to which Appendix D applies.

(2) In a case to which Appendix D applies, the party entitled to costs may receive or recover the amount entered on the summons in accordance with the Tables set out in Part I of Appendix D, or included in the judgment in accordance with Part II of Appendix D, in addition to the appropriate court fees, notwithstanding that the costs have not been taxed.

(3) In a case to which Appendix D does not apply no amount shall be entered on the summons

for solicitor's charges but the words "to be taxed" shall be inserted.

37. *Allowance without taxation.* (1) Where in an action or matter costs are awarded on the Lower Scale, the costs may be fixed and allowed without taxation.

(2) Where on the hearing of an action judgment is given for the plaintiff with costs on one of the Higher Scales and the plaintiff claims no costs except—

(a) any charges entered on the summons; and

(b) the charge for his solicitor's attendance at court without counsel; and

(c) witnesses' allowances; and

(d) court fees; and

(e) the costs of any affidavit under Order XX, r. 3A.

the costs may be fixed and allowed without taxation if the judge or registrar thinks fit.

(3) Where on the hearing of an action or matter judgment is given for the defendant with costs on one of the Higher Scales and the defendant claims no costs except witnesses' allowances, and the charges of his solicitor for taking instructions to defend and for attendance at Court without counsel, the costs may be fixed and allowed without taxation if the judge or registrar thinks fit.

38. *Taxation between party and party.* (1) Where a party desires his costs to be taxed, he shall within seven days of the making of the order for costs lodge a bill of costs in the court office with all necessary vouchers and papers, and obtain an appointment for taxation and serve on the other party a copy of the bill of costs, and

give him not less than one clear day's notice of the appointment.

(2) In a bill of costs the solicitor's charges shall be entered in a separate column from the disbursements.

(3) Where a party to an action or matter entitled to costs lodges a bill and obtains an appointment for taxation in a case where the costs might under these Rules be fixed and allowed without taxation, the registrar may disallow the costs of and incident to the preparation of the bill and the taxation of the costs.

(4) Where a party to an action or matter entitled to costs fails to comply with the requirements of paragraph (1) of this Rule within the time limited thereby or in any way delays or impedes the taxation, the registrar may—

(a) disallow the costs of an incident to the preparation of the bill and the taxation of the costs; and

(b) fix and allow such sum as he thinks reasonable for that party's costs of the action or matter, and tax and allow the costs of the other party (if any).

39. *Set-off of costs.* In any case in which a party entitled to receive costs is also liable to pay costs, the registrar may—

(a) tax the costs which that party is liable to pay, and adjust them by way of deduction or set-off and direct payment of any balance; or

(b) delay the allowance of the costs which he is entitled to receive, until he has paid the costs which he is liable to pay.

40. *Taxation between solicitor and client.* (1) Where an order for taxation of costs and charges

(2) The application may be made on the day of taxation and if not so made—

(a) the application shall be made on notice; and

(b) the notice shall be filed in the court office within two days of the taxation and unless otherwise ordered by the court shall operate as a stay of execution in respect of the costs until the application has been heard; and

(c) the notice shall specify the items in respect of which the application is made and the grounds and reasons for the objections.

(3) On the hearing of the application the registrar shall reconsider his taxation on the objections and shall if requested by either party state in writing the reasons for his decision thereon.

(4) Any party dissatisfied with the reconsideration of the taxation by the registrar may apply for a review of the taxation by the judge.

(5) The application may be made on the day on which the registrar has reconsidered the taxation and if not so made sub-paragraphs (a), (b), and (c) of paragraph (2) of this Rule shall apply with the necessary modifications.

(6) On the hearing of the application the judge may make such order as may be just. (*New Rule*—*County Court (No. 2) Rules, 1938.*)

PART VI

Miscellaneous

43. *Costs out of fund.* The judge may order any costs properly incurred by any party sued or suing in a fiduciary or representative character to be paid out of any fund in court available for the purpose.

44. *Costs not payable out of estate.* The costs

occasioned by any unsuccessful claim or unsuccessful resistance to any claim to any property shall not be paid out of the estate unless the judge otherwise directs.

45. *Costs of inquiries.* The costs of inquiries to ascertain the persons entitled to any legacy, money, or share, or otherwise incurred in relation thereto, shall be paid out of such legacy, money, or share, unless the judge otherwise directs.

46. *Distribution not to be delayed.* Where some of the persons entitled to a distributive share of a fund are ascertained, and difficulty or delay has occurred or is likely to occur in ascertaining the persons entitled to the other shares, the judge may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to answer the subsequent costs of ascertaining the persons entitled to the other shares; and in all such cases such order may be made for ascertaining and payment of the costs incurred down to and including such payment as the judge thinks reasonable.

47. *Taxation of costs payable out of estate.* If on the taxation of a bill of costs payable out of a fund or estate (real or personal) the amount of the solicitor's charges and disbursements contained in the bill is reduced by a sixth part, no costs of and incident to the preparation of the bill and the taxation of the costs shall be allowed to the solicitor lodging the bill for taxation.

48. *Notice of taxation of costs payable out of fund.* Where costs are directed to be taxed and paid out of any fund or property, the registrar may require the solicitor to deliver free of charge to any person for whom he has acted in the

proceedings, a copy of the bill accompanied by any statement which the registrar may direct and notice of the day and hour appointed for the taxation of the bill.

APPENDIX B

(AS AMENDED BY COUNTY COURT (No. 1), (No. 2),
AND (No. 3) RULES, 1938)

SCALES OF COSTS

LOWER SCALE

No. of Item		Column 1	Column 2
		£ s. d.	£ s. d.
1	Preparing particulars of claim or counter-claim, originating application, petition, or request for entry of appeal, and all necessary copies, where proceedings commenced and particulars, application, petition or request signed by solicitor	4 0	8 0
2	In addition to item 1 for service of summons, if served by solicitor	3 0	3 0
3	Where substituted service is ordered (in addition to item 2, if service is by solicitor)	3 0	3 0
4	Attending on entry of judgment on return day in ordinary action in accordance with defendant's admission and proposal as to time of payment made and accepted under Order IX Rule 1 (1) and (3)	3 4	3 4
5	(a) Attending on entry of judgment pursuant to Order X, Rule 2	3 4	3 4
	(b) Attending on entry of judgment for costs pursuant to Order XI, Rule 8 or Rule 9, or Order XVIII, Rule 2		
	(c) Attending court for an order for costs where in an ordinary action the amount claimed has been paid or all the goods claimed have been returned to the plaintiff without costs or with insufficient costs		
	(d) Plaintiff's solicitor attending court when debt and costs paid into court too late to prevent his attendance		

No. of Item		Column 1	Column 2
		£ s. d.	£ s. d.
6	Attending on disposal of default action <i>Note.</i> Where before the time fixed for disposal the defendant's proposal for payment is accepted and the fee for entering judgment paid, item 5 is to be allowed in lieu of this item.	5 0	5 0
7	Plaintiff's solicitor preparing for and attending trial where judgment is in accordance with defendant's admission and proposal as to time of payment made under Order IX, Rule 1 (1) <i>Note.</i> This charge may be allowed where part of the claim is admitted but the amount is not accepted, or where a proposal as to time of payment is made but not accepted.	5 0	5 0
8	(a) Plaintiff's solicitor preparing for and attending the trial <i>Note.</i> This charge is not to be allowed where item 7 is applicable. (b) Where plaintiff's solicitor does not attend trial but prepares an affidavit under Order XX, Rule 3A, including attending when deponent sworn, oath and filing	7 0	10 0
9	Defendant's solicitor, instructions, preparing defence, or answer to originating application or petition and attending trial	3 4	5 0
10	(a) Where trial is adjourned for want of time or upon payment of the costs of the day (b) Where trial is not concluded on the day on which it is commenced for each day or part of a day on which it is continued	10 0	15 0
11	Where the case is certified fit for counsel, the following charges may be allowed in addition to item 8, 9, or 14— (a) Instructions for Brief (b) Drawing brief, <i>per folio</i> <i>not to exceed</i> (c) Attendance on counsel with brief	5 0	5 0
12	Where the case is certified fit for counsel, the following charges may be allowed in addition to item 8, 9, or 14— (a) Instructions for Brief (b) Drawing brief, <i>per folio</i> <i>not to exceed</i> (c) Attendance on counsel with brief	3 4	3 4
13	Where costs of discovery are allowed, for obtaining or giving discovery, <i>not exceeding</i> Where an interlocutory application is made in course of proceedings and costs are awarded— (a) Notice of application and copies (b) Attendance obtaining appointment	1 0	1 0
		2 0	2 0
		2 0	2 0

No. of Item		Column 1	Column 2
		£ s. d.	£ s. d.
	(c) Service of notice	1 0	1 0
	(d) Attendance before registrar	2 0	2 0
	(e) Attendance before judge	5 0	5 0
14	(a) Preparing for and attending to support, or oppose, application for new trial or to set aside judgment or award or attending on the hearing of an appeal to the judge from a decision of the registrar	7 0	7 0
	Or		
	(b) If case certified fit for counsel	3 4	3 4
15	Where action is referred to arbitration—		
	(a) Attending court when action is referred	3 4	3 4
	(b) Attending before the arbitrator	7 0	10 0
	(c) Attending on entry of judgment	3 4	3 4
16	Attending hearing of judgment summons, if costs allowed under Order XXV, Rule 66	5 0	5 0

Counsel's Fees

17	Where case is certified fit for counsel—		
	(a) For the hearing of an action or matter	1 3 6	2 4 6
	(b) For an application for a new trial	1 3 6	1 3 6
	Note 1. Where cause conducted without counsel, item 8 or 9 may by order of the judge or registrar who heard the action or matter be increased in a case of difficulty to a sum not exceeding	1 0 0	2 0 0
	Note 2. Where there is no trial but costs are taxed under—		
	(a) Order XVIII, Rule 2 (discontinuance); or		
	(b) Order XI, Rule 8 or Rule 9 or Order XXVII, Rule 7 (4) or (5) (acceptance of money paid into Court); or		
	(c) Order IX, Rule 1 (5) (late admission or late acceptance of proposal); then if some costs of preparing for trial have been necessarily incurred, such portion of item 8 or item 9 as the registrar thinks reasonable may be allowed.		
	Note 3. This Scale shall apply to a counterclaim as if the defendant in the action were plaintiff and the plaintiff in the action were defendant.		

No. of Item		Column 1	Column 2
	<p><i>Note 4 (a).</i> In interpleader proceedings under an execution this Scale shall apply as if the claimant were plaintiff and the execution creditor and the registrar, if damages are claimed against him, were defendants.</p> <p><i>(b)</i> In interpleader proceedings other than under an execution, this Scale shall apply as if any person to whom costs are awarded were plaintiff, and as if the affidavit filed by the applicant under Order XXVIII, Rule 16, were particulars of claim.</p> <p><i>Note 5.</i> This Scale shall apply to garnishee proceedings as if the judgment creditor were plaintiff and the judgment debtor and the garnishee were defendants.</p>		

HIGHER SCALES SOLICITOR'S CHARGES

No. of Item	Particulars of Claim, etc.	Scale A £ s. d.	Scale B £ s. d.	Scale C £ s. d.
1	Preparing præcipe and particulars of claim, or particulars of counterclaim, or third-party notice—			
	(a) In an ordinary or default action for a liquidated demand only . . .	0 4 0	0 7 0	0 10 0
	(b) In any other action . . .	0 6 0	0 12 0	1 1 0
2	Preparing defence in ordinary or default action or answer in originating application or petition . . .	0 3 0	0 5 0	0 6 8
	Or per folio beyond three . . .		0 1 0	0 1 0
3	Preparing originating application, petition, or request for entry of appeal to county court, <i>per folio</i> . . .	0 1 0	0 1 0	0 1 0
	<i>Not exceeding</i> . . .	0 10 0	1 5 0	1 5 0
4	Preparing preliminary act or pleading in admiralty action . . .	0 6 0	0 12 0	1 1 0
5	Preparing particulars, when required by a party or ordered by the court . . .	0 2 0	0 3 0	0 5 0
	Or per folio . . .	0 0 8	0 0 8	0 0 8

No. of Item		Scale A	Scale B	Scale C
		£ s. d.	£ s. d.	£ s. d.
	<i>Notes to items 1-5</i>			
	(i) Each of these items includes the preparation of necessary copies;			
	(ii) These charges are only to be allowed where the particulars, defence, application, request, preliminary act or pleading, and any necessary copies, are signed by the solicitor or his clerk duly authorised in that behalf.			
	(iii) Where a fee is allowed for the settling of the document by counsel, item 17 (a) is to be allowed in lieu of one of these items.			
	<i>Service</i>			
6	Of any document required to be served personally, other than a judgment summons, including copy . . .	0 5 0	0 5 0	0 5 0
7	Where substituted service ordered—			
	(a) If service by solicitor, in addition to item 6, to include attendances, making appointments to serve summons, preparing and attending to swear and file affidavits and to obtain order, and the fees paid for oaths;	0 6 8	0 10 0	0 13 4
	(b) If service by bailiff, for attendances to request steps to be taken and to obtain order.			
8	Of any document authorised to be served by post, including copy . . .	0 1 0	0 1 6	0 1 6
9	Of process out of England and Wales, to include drawing, copying, attending to swear and file all affidavits and to obtain order, and the fees paid for oaths, such sum as the registrar thinks reasonable.			
	<i>Notes to items 6 and 8</i>			
	(i) Where any two or more documents to be served on the same party have been or could have been served			

No. of Item		Scale A £ s. d.	Scale B £ s. d.	Scale C £ s. d.
	together, one charge only for service is to be allowed.			
	(ii) Where two or more parties have been or could have been served together, one charge only for service is to be allowed.			
<i>Taking Instructions</i>				
10	(i) To sue or defend; or (ii) to counterclaim or oppose counterclaim; or (iii) to interplead or to claim or oppose claim in interpleader proceedings; or (iv) to file or oppose an originating application or petition or third-party notice, or application to set aside judgment or award or for new trial; or (v) to take or oppose garnishee proceedings; or (vi) to appeal or oppose an appeal to county court.	0 3 4	0 6 8	0 13 4
11	For preliminary act, pleading, or bail in admiralty action			
12	For preparing any document or making any application not otherwise provided for, where in the opinion of the registrar the document or application, and instructions therefor, were absolutely necessary			
13	For brief on application in course of proceedings			
14	For brief on trial of action or matter or on arbitration or reference in lieu of brief on trial			
	<i>Note.</i> The registrar should consider all the circumstances of the case and exercise great care in assessing this charge.	0 6 8 to 0 10 0	0 6 8 to 0 10 0	0 6 8 to 0 10 0
<i>Preparing for Trial where no Counsel employed</i>				
15	Taking proof of witness And if proof exceeds six	0 2 0	0 3 4	0 6 8

No. of Item		Scale A	Scale B	Scale C
		£ s. d.	£ s. d.	£ s. d.
	folios, for each additional folio	0 0 6	0 1 0	0 1 0
	<i>Note.</i> This charge may be allowed where proof required for preliminary act.			
16	Preparing notes of facts or argument for trial	{ 0 3 4 to 0 15 0	{ 0 6 8 to 1 1 0	{ 0 10 6 to 2 2 0
	<i>Note.</i> The registrar should consider the circumstances of the case and exercise great care in assessing this charge, and should make no allowance where it was known that the action would be undefended or that there would be no real contest.			

Preparing Instructions to Counsel and Brief

17	(a) To settle a pleading or other document		0 6 8	0 10 0
	(b) To advise on evidence if opinion given in writing		0 3 4	0 6 8
18	Brief on application in course of proceedings or further consideration	0 5 0	0 6 8	{ 0 6 8 to 0 13 4
19	Brief on trial of action or matter or on arbitration or reference in lieu of brief on trial, per folio	{ 0 1 0 not exceed- ing 0 10 0	0 1 0	0 1 0

Preparation of Documents

20	Notice to produce or admit or to admit facts, and one copy	0 3 0	0 4 0	0 5 0
21	Notice of any application to judge or registrar, including copies	0 2 0	0 3 0	0 5 0
22	Any necessary or proper notice, not otherwise provided for, including copies	0 1 6	0 2 0	0 2 6
	Or per folio beyond three	0 0 4	0 0 8	0 1 0
23	Admission of facts, including necessary copies	0 3 0	0 5 0	0 6 8
	Or per folio beyond three	0 0 4	0 0 8	0 1 0
24	Draft of order under Order XIII, Rule 12, ¹ including copy to file	0 2 0	0 3 0	0 5 0
	Or per folio	0 0 4	0 0 8	0 1 0

¹ Order XIII, Rule 12, relates to the order for the sale of perishables.

No. of Item		Scale A			Scale B			Scale C		
		£	s.	d.	£	s.	d.	£	s.	d.
25	Interrogatories or answers thereto including copy to file	0	2	6	0	5	0	0	6	8
	Or per folio	0	0	4	0	0	8	0	1	0
26	Affidavit under Order XX, Rule 3a or Order XXVII, Rule 4, ¹ including copy, attending when deponent sworn, oath and filing	0	5	0	0	6	8	0	6	8
27	Affidavit of service of any document requiring personal service, including copy, attending to be sworn, oath and filing	0	3	4	0	5	0	0	5	0
28	Affidavit, when required, of service of any notice under Order XX, Rule 12, ² including copy, attending to be sworn, oath and filing	0	2	0	0	2	0	0	3	4
29	Affidavit not otherwise provided for including copy	0	2	6	0	5	0	0	5	0
	Or per folio	0	0	4	0	0	8	0	1	0
30	Accounts, statements, and other documents if required by judge or registrar, including copy, per folio	0	0	4	0	0	8	0	1	0
31	Bill of costs for taxation including copy for registrar, per folio	0	0	4	0	0	8	0	0	8
	<i>Note to items 20-30</i> Where a fee is allowed for the settling of a document by counsel, item 17 (a) is to be allowed in lieu of one of these items.									

Copies

32	For copies of necessary documents to accompany brief, or for the use of judge or registrar or arbitrator, or on an inquiry or admiralty reference, per folio	0	0	2	0	0	4	0	0	4
33	For each necessary copy of a document not included in the charge for preparing or serving the document, per folio	0	0	2	0	0	4	0	0	4

¹ Order XXVII, Rule 4—Affidavit in support of garnishee summons.² Order XX, Rule 12, provides that an affidavit of a party or his solicitor or some person in the permanent and exclusive employ of either of them of the service of a notice to admit or produce and of the time when it was served, together with a copy of the notice to admit or produce, shall be sufficient evidence of the fact and time of service.

No. of Item		Scale A	Scale B	Scale C
		£ s. d.	£ s. d.	£ s. d.
	<i>Note to items 32 and 33. Half the charge is to be allowed for carbon copies.</i>			
	<i>The following appear to be all the cases where the fee allowed includes copies—</i>			
	Item			
	Particulars of claim, etc. 1			
	Defence and answer 2			
	Originating application, petition, etc. 3			
	Preliminary act or pleading in admiralty 4			
	Particulars 5			
	Service of a document other than a judgment summons 6			
	Service by post 8			
	Service out of England and Wales 9			
	Notice to admit or produce or to admit facts 20			
	Notice of application 21, 22			
	Admission of facts 23			
	Order under Order XIII, Rule 12 24			
	Interrogatories and answers 25			
	Affidavit under Order XXVII, Rule 4 26			
	Affidavit of service 27			
	Affidavit of service of notices to admit or produce under Order XX, Rule 12 28			
	Any other affidavit 29			
	Accounts, statements, etc. 30			
	Bill of costs 31			
	Taxation, other than costs of action 62 (b)			

Perusing

34	Particulars of claim or counterclaim	}	0 3 0	0 4 0	0 5 0
	Defence				
	Originating application				
	Petition				
	Answer to originating application or petition				
	Request to enter appeal to county court				
	Preliminary act or pleading in admiralty action				

No. of Item		Scale A	Scale B	Scale C
		£ s. d.	£ s. d.	£ s. d.
	Third-party notice . . .	0 3 0	0 4 0	0 5 0
	Notice of application for new trial . . .			
	Notice of application to set aside judgment or award . . .			
	Notice to produce . . .			
	Notice to admit . . .			
	Notice to admit facts . . .			
	Particulars required by a party or ordered by the court . . .			
	Interrogatories . . .			
	Answers to interrogatories . . .			
	Affidavit other than affidavit of service . . .			
	Draft judgment or order prepared by registrar . . .	0 0 2	0 0 4	0 0 4
	Or per folio . . .			

Attendances

35	On entry of plaint, originating application, petition, appeal or application for new trial or to set aside award . . .	0 3 4	0 6 8	0 6 8
	<i>Note.</i> This charge includes giving any undertaking prior to such entry.			
36	To deliver or file any—	0 2 0	0 3 4	0 3 4
	Counterclaim . . .			
	Defence . . .			
	Answer to originating application or petition . . .			
	Third-party notice . . .			
	Particulars required by a party or ordered by the court . . .			
	Answers to interrogatories . . .			
	Admission of facts . . .			
	Affidavit of documents . . .			
	Particulars of claim in interpleader proceedings, or Pleading in admiralty action			
	Or to file or inspect preliminary act . . .			
	Or to issue execution against goods . . .			
37	To lodge papers, when proceedings transferred to county court, including preparation of all necessary documents . . .		0 13 4	0 13 4

No. of Item		Scale A £ s. d.	Scale B £ s. d.	Scale C £ s. d.
38	To inspect, or produce for inspection documents pursuant to a notice to admit, or pursuant to any order or a notice under any Rule Or per hour occupied by the inspection <i>Note.</i> This charge is not to be allowed unless it is shown to the satisfaction of the registrar that there were good and sufficient reasons for giving the notice and making the inspection	0 3 4	0 6 8 0 6 8	0 6 8 0 6 8
39	To obtain or give any necessary or proper consent or admission	0 2 0	0 3 4	0 6 8
40	To obtain summons to witness, including preparation of praecipe <i>Note.</i> Only one charge is to be allowed where only one attendance is necessary to obtain summonses to more than one witness.	0 2 0	0 3 0	0 5 0
41	To arrange attendance of witness without subpoena <i>Note.</i> Only one charge is to be allowed where only one attendance is necessary to arrange attendance of more than one witness.	0 2 0	0 3 0	0 5 0
42	On examination of witness under Order XIV, Rule 1 (10), Order XX, Rule 18 (1), or Order XXV, Rule 2, ¹ per hour	0 3 4	0 6 8	0 10 0
43	On deponent being sworn to an affidavit <i>Notes.</i> (i) This charge may be allowed where the solicitor or his clerk is the deponent. (ii) Only one charge is to be allowed where more than one deponent is sworn to the same affidavit at the same time.	0 2 0	0 3 4	0 6 8
44	On entry of judgment on return day in ordinary action in accordance with defendant's admission and			

¹ Order XIV, Rule 1 (10)—examination where interrogatories not answered or insufficiently answered; Order XX, Rule 18 (1), examination of witness out of court; Order XXV, Rule 2, examination of judgment debtor.

No. of Item		Scale A £ s. d.	Scale B £ s. d.	Scale C £ s. d.
	proposal as to time of payment made and accepted under Order IX, Rule 1 (1) and (3)	0 3 4	0 5 0	0 6 8
45	On entry of judgment pursuant to Order X, Rule 2	0 3 4	0 5 0	0 6 8
46	On disposal of default action (including taking client's instructions)	0 6 8	0 10 0	0 13 4
	<i>Note.</i> Where before the time fixed for disposal the defendant's proposal for payment is accepted and the fee for entering judgment paid, item 45 is to be allowed in lieu of this item.			
47	Where in consequence of anything done by the opposite party during the proceedings, attendance is made on client to advise or receive instructions, for each necessary attendance	0 3 4	0 6 8	0 6 8
48	Any attendance upon the opposite party not otherwise provided for, which appears to the registrar to have been absolutely necessary	0 3 4	0 6 8	0 6 8
49	On any application in the course of proceedings to the judge or registrar—			
	(a) without counsel	{ 0 3 4 to 0 10 0	{ 0 5 0 to 0 13 4	{ 0 6 8 to 1 1 0 0 6 8 to 0 10 0
	(b) with counsel	0 3 4	0 6 8	
50	On hearing of judgment summons, if costs allowed under Order XXV, Rule 66	0 5 0	0 6 8	0 10 0
51	On counsel with brief	0 3 4	0 3 4	0 6 8
52	At conference, including making appointment		0 6 8	0 13 4
53	At court, conducting cause without counsel, where judgment for plaintiff is in accordance with defendant's admission and proposal as to time of payment made under Order IX, Rule 1 (1)	0 6 8	0 10 0	0 13 4
	<i>Note.</i> This charge may be allowed where part of the claim is admitted but the			

No. of Item		Scale A £ s. d.	Scale B £ s. d.	Scale C £ s. d.
	amount admitted is not accepted, or where a proposal as to time of payment is made but not accepted.			
54	At court conducting cause without counsel <i>Notes.</i> (i) The minimum must not be exceeded if the action is undefended, or there is no real contest. (ii) This charge is not to be allowed where item 53 applies.	{ 0 15 0 to 1 1 0	{ 1 1 0 to 2 2 0	{ 1 1 0 to 3 3 0
55	At court on trial with counsel <i>Notes.</i> (i) The minimum must not be exceeded if the case is undefended, or there is no real contest, or if the solicitor does not attend in person. (ii) This item does not apply where the costs of employing counsel are not allowed.	0 10 0	{ 0 15 0 to 1 1 0	{ 1 1 0 to 2 2 0
56	Where trial is not concluded on day on which it is commenced, for each day or part of a day on which it is continued, with or without counsel <i>Note.</i> This charge is not to be allowed, where item 53 is applicable.	0 10 0	{ 0 15 0 to 1 1 0	{ 1 1 0 to 2 2 0
57	Where trial is adjourned for want of time, or upon payment of the costs of the day, in lieu of item 54 or item 55, with or without counsel <i>Note.</i> The minimum must not be exceeded, under item 56 or item 57, if the solicitor does not attend in person.	0 10 0	{ 0 15 0 to 1 1 0	{ 1 1 0 to 2 2 0
58	To hear a deferred judgment	0 5 0	0 6 8	{ 0 6 8 to 0 10 0
59	At court when action referred— (a) without counsel (b) with counsel	0 10 0 0 6 8	0 15 0 { 0 10 0 to 0 15 0	1 1 0 { 0 15 0 to 1 1 0

No. of Item		Scale A £ s. d.	Scale B £ s. d.	Scale C £ s. d.
60	Before an arbitrator, or on an inquiry or admiralty reference, for each sitting—			
	(a) without counsel . . .	0 15 0	1 10 0	$\left\{ \begin{array}{l} 1 \text{ } 1 \text{ } 0 \\ \text{to} \\ 2 \text{ } 2 \text{ } 0 \\ 1 \text{ } 1 \text{ } 0 \end{array} \right.$
	(b) with counsel . . .	0 10 0	0 15 0	
	(c) with or without counsel, if the sitting exceeds three hours, for every additional hour . . .	0 5 0	0 6 8	0 10 0
	<i>Note.</i> This fee is not to be allowed if the reference or inquiry was directed at the trial, and the reference or inquiry began on the same day.			
61	At court on entry of judgment on the award . . .	0 5 0	0 6 8	0 10 0
62	(a) On taxation of the costs of the action or matter . . .	0 3 4	0 6 8	$\left\{ \begin{array}{l} 0 \text{ } 6 \text{ } 8 \\ \text{to} \\ 1 \text{ } 1 \text{ } 0 \end{array} \right.$
	(b) On any other taxation, to include drawing bill, copies, notice, service and obtaining appointment to tax . . .	0 2 0	0 4 0	0 6 0
63	Any attendance at the court office not otherwise provided for, which appears to the registrar to have been absolutely necessary . . .	0 2 0	0 3 4	0 3 4
<i>Letters, etc.</i>				
64	Letter before action . . .	0 2 0	0 3 6	0 3 6
65	Letters in lieu of attendances which could be properly allowed under item 47 or item 48 . . .	0 2 0	0 3 6	0 3 6
	<i>Note.</i> Where a letter is written in lieu of making an attendance which could be properly allowed under item 35, 36, 37, 39, 40, 41, 45, 51, or 63, the same charge may be allowed for the letter as could have been allowed for the attendance.			
66	Circular letters . . .	0 1 0	0 1 0	0 1 0

No. of Item	DISBURSEMENTS <i>Fees to Counsel</i>	Scale A	Scale B	Scale C
67	With brief on trial or hearing of action or matter or in lieu thereof with brief on hearing of arbitration or reference <i>Note.</i> The registrar should consider the length of the brief, the documents (if any) to be perused and considered, the number of the witnesses and the difficulties of fact or law involved, and should exercise great care in assessing this fee.	£ s. d. 2 4 6	£ s. d. { 2 4 6 to 5 10 0	£ s. d. 3 5 6 to 8 13 0
68	Where there is no local bar in the court town or within twenty-five miles thereof, if in the opinion of the registrar the maximum fee allowable with the brief is insufficient, a further fee may be allowed, not exceeding <i>Note.</i> This item is not to be allowed in any court within twenty-five miles of Charing Cross.	1 3 6	2 4 6	2 4 6
69	On conference, if the fee was marked on the brief when delivered, and in the opinion of the registrar was necessary		1 6 0	1 6 0
70	Where trial or hearing of action, matter, arbitration or reference is not concluded on day on which it is commenced, or is adjourned for want of time, or upon payment of the costs of the day for each day or part of a day on which it is continued <i>Note.</i> Where an action or matter is at the hearing referred to arbitration, or for inquiry and report, and the hearing of the arbitration or reference is not concluded on the day on which the action or matter was referred, this fee may be allowed for each subsequent day or part of a day on which the arbitration or reference is heard.	{ 1 3 6	{ 1 3 6 to 2 4 6	{ 2 4 6 to 3 5 6

No. of Item		Scale A			Scale B			Scale C		
		£	s.	d.	£	s.	d.	£	s.	d.
71	With brief on further consideration or to hear a deferred judgment	1	3	6	1	3	6	2	4	6
72	With brief on application in course of proceedings				to			to		
73	With brief on an inquiry or admiralty reference, or on an examination of witnesses under Order XIV, Rule 1 (10), Order XX, Rule 18 (1), or Order XXV, Rule 2, not exceeding. ¹	1	3	6	2	4	6	3	5	6
	<i>Note.</i> This fee is not to be allowed if the reference or inquiry was directed at the trial, and counsel was then instructed, and the reference or inquiry began on the same day.				1	3	6	2	4	6
					to			to		
					2	4	6	3	5	6
74	For settling any document which in the opinion of the registrar is proper to be settled by counsel							1	3	6
								to		
								2	4	6
75	For advising on evidence, if advice given in writing				1	3	6	1	3	6
	<i>Note.</i> Fees to counsel are not to be allowed unless the payment of them is vouched by the signature of the counsel.							to		
								2	4	6
<i>Plans, Models, etc.</i>										
76	For plans, drawings, charts or models for use at the trial, sum paid not exceeding	1	1	0	2	2	0	3	3	0
<i>Miscellaneous</i>										
77	For obtaining any documentary evidence or police reports or statements from the police which in the opinion of the registrar it was reasonably necessary to obtain for the purpose of the action or matter, the sum actually and reasonably paid.									
78	For oaths, sum paid, unless included in another item.									

¹ Order XIV, Rule 1 (10)—examination where interrogatories not answered or insufficiently answered; Order XX, Rule 18 (1)—examination of witness out of court; Order XXV, Rule 2—examination of judgment debtor.

No. of Item		Scale A	Scale B	Scale C
		£ s. d.	£ s. d.	£ s. d.
79	For postages, carriage, and transmission of documents	0 1 0 to 0 2 0	0 2 0 to 0 3 4	0 3 4 to 0 6 8
80	In addition to item 38 (inspection) or items 54 to 57 (attending trial) where solicitor does not reside or carry on business within two miles of the place of inspection, or the town in which the trial takes place, the sum actually and reasonably paid for travelling, not exceeding	0 10 0	1 0 0	1 0 0
	<i>Note.</i> Where a party employs a solicitor who does not reside or carry on business in or near the district of the court, this item is not to be allowed unless in the opinion of the registrar the party had reasonable ground for employing such solicitor.			
81	In addition to item 62 (a) (taxation), where solicitor does not reside or carry on business within two miles of the court office—			
	(i) The sum actually and reasonably paid for travelling to attend the taxation, not exceeding	0 4 0	0 7 0	0 7 0
	or			
	(ii) If agent reasonably employed, for correspondence with agent	0 4 0	0 7 0	0 7 0

APPENDIX C

COMPENSATION FOR LOSS OF TIME

Class of Person	Column 1 Sum to be paid or tendered at time of service of witness summons	Column 2 Maximum sum per day allowable on taxation (including any sum paid under Column 1)
	£ s. d.	£ s. d.
(a) Professional persons, and owners, directors or managers of a business	0 15 0	1 10 0
(b) Clerks, artisans, labourers and other employed persons	0 7 6	0 15 0
(c) Police officers	0 12 6	0 12 6
(d) Other persons	0 5 0	0 10 0

[Order XX, Rule 8 (5). There shall be paid or tendered to the witness at the time of the service of the summons—

(a) the sum prescribed by column 1 as compensation for loss of time for a person of the class to whom the witness belongs, and in addition—

(b) a sum reasonably sufficient to cover his expenses in travelling to and from the court, with a minimum of one shilling.

Provided that in the case of a judgment summons it shall be sufficient to pay or tender to the judgment debtor, a sum reasonably sufficient to cover his expenses in travelling to and from the court, with a minimum of one shilling. See also Order XLVII, Rules 29–34 (p. 61).]

FIXED COSTS

Part I

SUMMONSES

Directions

1. *Recovery of money or goods.* (1) Tables I to IV in this Part of this Appendix show the amount to be entered on the summons in respect of solicitor's charges in an action for the recovery of a sum of money only, or for the recovery of property other than land or money with or without a claim for a sum of money, or in garnishee proceedings.

(2) In Column 1 of Tables I to IV the expression "Sum of Money" means the sum of money

claimed, or, in relation to an action for the recovery of property other than land or money, the value of the property claimed, as stated in the praecipe.

2. *Recovery of land.* (1) The purpose of Table V in this Part of this Appendix is to apply Tables I and II to a summons in an action for the recovery of land.

(2) In Column 1 of Table V lands of every description and tenure are divided into three categories according to the rent or value as stated in the praecipe, on the basis of a weekly rent irrespective of the period at which the rent (if any) was actually payable.

(3) If no money is claimed in respect of rent or mesne profits or if the money claimed does not exceed the sum specified in Column 2 of Table V opposite the category in Column 1 to which the land belongs, the amount of solicitor's charges to be entered on the summons shall be the same as the amount to be entered under Table I or Table II on a summons in an ordinary action for the recovery of the specified sum only.

(4) If money is claimed exceeding the specified sum, the amount of solicitor's charges to be entered on the summons shall be the same as the amount to be entered under Table I or Table II on a summons in an action for the recovery of the money claimed only.

(5) The amount so entered on the summons is for the purpose only of fixing the amount which the plaintiff may receive in respect of solicitor's charges without taxation in the event of the defendant giving up possession and paying the sum claimed (if any) and costs, and is subject to

reduction or increase in consequence of the exercise of the discretion conferred by Order XLVII, Rule 15 (see page 58) as to the scale on which costs may be awarded.

3. The Tables do not apply where the summons is to be served out of England and Wales.

TABLES OF FIXED COSTS

TABLE I

LOWER SCALE, ORDINARY, DEFAULT, OR GARNISHEE SUMMONS

Column 1 Sum of Money	Column 2 Amount of Charges	
	<i>s. d.</i>	<i>s. d.</i>
Exceeding £2 and not exceeding £5.		
(a) Where service is by bailiff.	Item 1	4 0
(b) Where service is by solicitor.	{ Item 1 4 0 } „ 2 3 0 }	7 0
Exceeding £5 and not exceeding £10.		
(a) Where service is by bailiff.	Item 1	8 0
(b) Where service is by solicitor.	{ Item 1 8 0 } „ 2 3 0 }	11 0
In addition to any of the above-mentioned charges, where an order is made for substituted service.	Item 3	3 0

TABLE II

HIGHER SCALE
ORDINARY SUMMONS

Column 1 Sum of Money	Column 2 Amount of Charges	
	<i>s. d.</i>	£ <i>s. d.</i>
A. Exceeding £10 and not exceeding £20.		
(a) Where service is by bailiff and the claim is—	{ Item 1 4 0 } „ 10 (i) 3 4 }	0 12 8
(i) a liquidated demand.	{ „ 35 3 4 } „ 64 2 0 }	

Column 1 Sum of Money	Column 2 Amount of Charges
(ii) any other claim.	<div> <div>s. d.</div> <div>Item 1 6 0</div> <div>(Otherwise as above)</div> </div> <div>£ s. d.</div> <div>0 14 8</div>
(b) In addition to (i) or (ii) where service is by solicitor.	<div> <div>s. d.</div> <div>Item 6 5 0</div> <div>„ 27 3 4</div> </div> <div>0 8 4</div>
In addition to (a) or (b) where an order for substituted service is made.	<div>Item 7</div> <div>0 6 8</div>
B. Exceeding £20 and not exceeding £50.	
(a) Where service is by bailiff and the claim is—	
(i) a liquidated demand.	<div> <div>Item 1 7 0</div> <div>„ 10 (i) 6 8</div> <div>„ 35 6 8</div> <div>„ 64 3 6</div> </div> <div>33½% 1 3 10</div> <div>7 11</div> <div>1 11 9</div>
(ii) any other claim.	<div> <div>Item 1 12 0</div> <div>(Otherwise as above)</div> </div> <div>33½% 1 8 10</div> <div>0 9 7</div> <div>1 18 5</div>
(b) In addition to (i) or (ii) where service is by solicitor.	<div> <div>Item 6 5 0</div> <div>„ 27 5 0</div> </div> <div>0 10 0</div> <div>33½% 0 3 4</div> <div>0 13 4</div>
In addition to (a) or (b) where an order for substituted service is made.	<div>Item 7</div> <div>0 10 0</div> <div>33½% 0 3 4</div> <div>0 13 4</div>
C. Exceeding £50.	
(a) Where service is by bailiff and the claim is—	
(i) a liquidated demand.	<div> <div>Item 1 10 0</div> <div>„ 10 (i) 13 4</div> <div>„ 35 6 8</div> <div>„ 64 3 6</div> </div> <div>33½% 1 13 6</div> <div>0 11 2</div> <div>2 4 8</div>

Column 1 Sum of Money	Column 2 Amount of Charges						
(ii) any other claim.	<table> <tr> <td>$\begin{Bmatrix} \text{Item 1} & 1 & 1 & 0 \\ \text{(Otherwise as above)} \end{Bmatrix}$</td><td>$\begin{matrix} £ & s. & d. \\ 2 & 4 & 6 \end{matrix}$</td></tr> <tr> <td></td><td>$33\frac{1}{3}\%$ 0 14 10</td></tr> <tr> <td></td><td><hr/>2 19 4</td></tr> </table>	$\begin{Bmatrix} \text{Item 1} & 1 & 1 & 0 \\ \text{(Otherwise as above)} \end{Bmatrix}$	$\begin{matrix} £ & s. & d. \\ 2 & 4 & 6 \end{matrix}$		$33\frac{1}{3}\%$ 0 14 10		<hr/> 2 19 4
$\begin{Bmatrix} \text{Item 1} & 1 & 1 & 0 \\ \text{(Otherwise as above)} \end{Bmatrix}$	$\begin{matrix} £ & s. & d. \\ 2 & 4 & 6 \end{matrix}$						
	$33\frac{1}{3}\%$ 0 14 10						
	<hr/> 2 19 4						
(b) In addition to (i) or (ii) where service is by solicitor.	<table> <tr> <td>$\begin{Bmatrix} \text{Item 6} & 5 & 0 \\ \text{,, 27} & 5 & 0 \end{Bmatrix}$</td><td>$\begin{matrix} £ & s. & d. \\ 0 & 10 & 0 \end{matrix}$</td></tr> <tr> <td></td><td>$33\frac{1}{3}\%$ 0 3 4</td></tr> <tr> <td></td><td><hr/>0 13 4</td></tr> </table>	$\begin{Bmatrix} \text{Item 6} & 5 & 0 \\ \text{,, 27} & 5 & 0 \end{Bmatrix}$	$\begin{matrix} £ & s. & d. \\ 0 & 10 & 0 \end{matrix}$		$33\frac{1}{3}\%$ 0 3 4		<hr/> 0 13 4
$\begin{Bmatrix} \text{Item 6} & 5 & 0 \\ \text{,, 27} & 5 & 0 \end{Bmatrix}$	$\begin{matrix} £ & s. & d. \\ 0 & 10 & 0 \end{matrix}$						
	$33\frac{1}{3}\%$ 0 3 4						
	<hr/> 0 13 4						
In addition to (a) or (b) where an order is made for substituted service.	<table> <tr> <td>Item 7</td><td>$\begin{matrix} £ & s. & d. \\ 0 & 13 & 4 \end{matrix}$</td></tr> <tr> <td></td><td>$33\frac{1}{3}\%$ 0 4 5</td></tr> <tr> <td></td><td><hr/>0 17 9</td></tr> </table>	Item 7	$\begin{matrix} £ & s. & d. \\ 0 & 13 & 4 \end{matrix}$		$33\frac{1}{3}\%$ 0 4 5		<hr/> 0 17 9
Item 7	$\begin{matrix} £ & s. & d. \\ 0 & 13 & 4 \end{matrix}$						
	$33\frac{1}{3}\%$ 0 4 5						
	<hr/> 0 17 9						

TABLE III
HIGHER SCALE
DEFAULT SUMMONS

Column 1 Sum of Money	Column 2 Amount of Charges						
A. Exceeding £10 and not exceeding £20.							
(a) Where service is by bailiff	<table> <tr> <td>$\begin{Bmatrix} \text{Item 1} & 4 & 0 \\ \text{,, 10 (i)} & 3 & 4 \\ \text{,, 35} & 3 & 4 \\ \text{,, 64} & 2 & 0 \end{Bmatrix}$</td><td>$\begin{matrix} s. & d. & £ & s. & d. \\ & & 0 & 12 & 8 \end{matrix}$</td></tr> </table>	$\begin{Bmatrix} \text{Item 1} & 4 & 0 \\ \text{,, 10 (i)} & 3 & 4 \\ \text{,, 35} & 3 & 4 \\ \text{,, 64} & 2 & 0 \end{Bmatrix}$	$\begin{matrix} s. & d. & £ & s. & d. \\ & & 0 & 12 & 8 \end{matrix}$				
$\begin{Bmatrix} \text{Item 1} & 4 & 0 \\ \text{,, 10 (i)} & 3 & 4 \\ \text{,, 35} & 3 & 4 \\ \text{,, 64} & 2 & 0 \end{Bmatrix}$	$\begin{matrix} s. & d. & £ & s. & d. \\ & & 0 & 12 & 8 \end{matrix}$						
(b) In addition to (a) where service is by solicitor.	<table> <tr> <td>$\begin{Bmatrix} \text{Item 6} & 5 & 0 \\ \text{,, 27} & 3 & 4 \end{Bmatrix}$</td><td>$\begin{matrix} £ & s. & d. \\ 0 & 8 & 4 \end{matrix}$</td></tr> </table>	$\begin{Bmatrix} \text{Item 6} & 5 & 0 \\ \text{,, 27} & 3 & 4 \end{Bmatrix}$	$\begin{matrix} £ & s. & d. \\ 0 & 8 & 4 \end{matrix}$				
$\begin{Bmatrix} \text{Item 6} & 5 & 0 \\ \text{,, 27} & 3 & 4 \end{Bmatrix}$	$\begin{matrix} £ & s. & d. \\ 0 & 8 & 4 \end{matrix}$						
In addition to (a) or (b) where an order for substituted service is made.	<table> <tr> <td>Item 7</td><td>$\begin{matrix} £ & s. & d. \\ 0 & 6 & 8 \end{matrix}$</td></tr> </table>	Item 7	$\begin{matrix} £ & s. & d. \\ 0 & 6 & 8 \end{matrix}$				
Item 7	$\begin{matrix} £ & s. & d. \\ 0 & 6 & 8 \end{matrix}$						
B. Exceeding £20 and not exceeding £50.							
(a) Where service is by bailiff	<table> <tr> <td>$\begin{Bmatrix} \text{Item 1} & 7 & 0 \\ \text{,, 10 (i)} & 6 & 8 \\ \text{,, 35} & 6 & 8 \\ \text{,, 64} & 3 & 6 \end{Bmatrix}$</td><td>$\begin{matrix} £ & s. & d. \\ 1 & 3 & 10 \end{matrix}$</td></tr> <tr> <td></td><td>$33\frac{1}{3}\%$ 0 7 11</td></tr> <tr> <td></td><td><hr/>1 11 9</td></tr> </table>	$\begin{Bmatrix} \text{Item 1} & 7 & 0 \\ \text{,, 10 (i)} & 6 & 8 \\ \text{,, 35} & 6 & 8 \\ \text{,, 64} & 3 & 6 \end{Bmatrix}$	$\begin{matrix} £ & s. & d. \\ 1 & 3 & 10 \end{matrix}$		$33\frac{1}{3}\%$ 0 7 11		<hr/> 1 11 9
$\begin{Bmatrix} \text{Item 1} & 7 & 0 \\ \text{,, 10 (i)} & 6 & 8 \\ \text{,, 35} & 6 & 8 \\ \text{,, 64} & 3 & 6 \end{Bmatrix}$	$\begin{matrix} £ & s. & d. \\ 1 & 3 & 10 \end{matrix}$						
	$33\frac{1}{3}\%$ 0 7 11						
	<hr/> 1 11 9						

Column 1 Sum of Money	Column 2 Amount of Charges																								
(b) In addition to (a) where service is by solicitor.	<table> <tr> <td>{ Item 6</td><td>s. d.</td><td>£ s. d.</td></tr> <tr> <td></td><td>5 0</td><td>0 10 0</td></tr> <tr> <td>{ „ 27</td><td>5 0</td><td></td></tr> <tr> <td></td><td></td><td>33½% 0 3 4</td></tr> <tr> <td></td><td></td><td><u>0 13 4</u></td></tr> </table>	{ Item 6	s. d.	£ s. d.		5 0	0 10 0	{ „ 27	5 0				33½% 0 3 4			<u>0 13 4</u>									
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		<u>0 13 4</u>																							
C. Exceeding £50.																									
(a) Where service is by bailiff	<table> <tr> <td>{ Item 1</td><td>10 0</td><td></td><td></td></tr> <tr> <td>{ „ 10 (i)</td><td>13 4</td><td></td><td>1 13 6</td></tr> <tr> <td>{ „ 35</td><td>6 8</td><td></td><td></td></tr> <tr> <td>{ „ 64</td><td>3 6</td><td></td><td></td></tr> <tr> <td></td><td></td><td>33½% 0 11 2</td><td></td></tr> <tr> <td></td><td></td><td><u>2 4 8</u></td><td></td></tr> </table>	{ Item 1	10 0			{ „ 10 (i)	13 4		1 13 6	{ „ 35	6 8			{ „ 64	3 6					33½% 0 11 2				<u>2 4 8</u>	
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{ Item 6	5 0		0 10 0																						
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Item 7		0 13 4																							
		33½% 0 4 5																							
		<u>0 17 9</u>																							

TABLE IV
HIGHER SCALE
GARNISHEE SUMMONS

Column 1 Sum of Money	Column 2 Amount of Charges
A. Exceeding £10 and not exceeding £20.	s. d. £ s. d.
(a) Where service is by bailiff	{ Item 10 (v) 3 4 } 0 10 8
	{ " 26 4 0 }
	{ " 35 3 4 }

Column 1 Sum of Money	Column 2 Amount of Charges																														
(b) In addition, where service is by solicitor.	<table><tr><td>{ Item 6</td><td>s. 5</td><td>d. 0</td><td>£</td><td>s. 8</td><td>d. 4</td></tr><tr><td>{ „ 27</td><td>3</td><td>4</td><td>0</td><td>8</td><td>4</td></tr></table>	{ Item 6	s. 5	d. 0	£	s. 8	d. 4	{ „ 27	3	4	0	8	4																		
{ Item 6	s. 5	d. 0	£	s. 8	d. 4																										
{ „ 27	3	4	0	8	4																										
B. Exceeding £20 and not exceeding £50.																															
(a) Where service is by bailiff	<table><tr><td>{ Item 10 (v)</td><td>6</td><td>8</td><td></td><td></td><td></td></tr><tr><td>{ „ 26</td><td>6</td><td>8</td><td>1</td><td>0</td><td>0</td></tr><tr><td>{ „ 35</td><td>6</td><td>8</td><td></td><td></td><td></td></tr><tr><td></td><td></td><td>33½%</td><td>0</td><td>6</td><td>8</td></tr><tr><td></td><td></td><td></td><td>1</td><td>6</td><td>8</td></tr></table>	{ Item 10 (v)	6	8				{ „ 26	6	8	1	0	0	{ „ 35	6	8						33½%	0	6	8				1	6	8
{ Item 10 (v)	6	8																													
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(b) In addition, where service is by solicitor.	<table><tr><td>{ Item 6</td><td>5</td><td>0</td><td>0</td><td>10</td><td>0</td></tr><tr><td>{ „ 27</td><td>5</td><td>0</td><td></td><td></td><td></td></tr><tr><td></td><td></td><td>33½%</td><td>0</td><td>3</td><td>4</td></tr><tr><td></td><td></td><td></td><td>0</td><td>13</td><td>4</td></tr></table>	{ Item 6	5	0	0	10	0	{ „ 27	5	0						33½%	0	3	4				0	13	4						
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{ Item 6	5	0	0	10	0																										
{ „ 27	5	0																													
		33½%	0	3	4																										
			0	13	4																										

TABLE V
SUMMONS FOR RECOVERY OF LAND

Column 1 Rent or Value of Land as stated in the Praeipie	Column 2 Sum of Money
(i) Where no rent was reserved or the rent was nominal or the rent or value was at a rate not exceeding 10s. per week	£5
(ii) Where the rent or value was at a rate exceeding 10s. per week and not exceeding £1 per week	£10
(iii) Where the rent or value was at a rate exceeding £1 per week	£20

Part II**JUDGMENTS**

1. Where a fixed sum has been entered on a summons in accordance with one of the first four Tables set out in Part I of this Appendix, and—

(a) judgment is entered in an ordinary action in accordance with the defendant's admission and proposal as to time of payment made and accepted under Order IX, Rule 1 (1) and (3); or

(b) judgment is entered in a default action in default of defence; or

(c) judgment is given in a default action on disposal;

the amount to be included in the judgment in respect of solicitor's charges shall be the amount entered on the summons, and in addition—

(i) item 4, 5, or 6 of the Lower Scale or item 44, 45, or 46 of the appropriate Higher Scale, whichever is applicable; and

(ii) where there is more than one defendant, any charge for service of the summons authorised by the Scales of Costs and earned, but not included in the summons.

(iii) any percentage increase authorised by Order XLVII, Rule 41 (1).

2. This Part of this Appendix shall not apply to a judgment in an action for recovery of land.

144 Lower Scale. See Appendix B, p. 69.

150 Higher Scales. See Appendix B, p. 72.

172 Allowances to Witnesses. See Appendix C, p. 86.

- 173 **Fixed Costs.** See Appendix D, p. 86.
- 175 **Garnishee Summons.** See Appendix D, p. 91.
- 176 **Execution and Judgment Summons.** See Higher Scale, items Nos. 36 and 50.

ORDER XXV.

24 (1) Except as otherwise provided by these Rules, the costs of warrants, whether executed or unexecuted or unproductive, shall be allowed against the judgment debtor unless the judge otherwise directs.

(2) Where a praecipe for a warrant of execution against goods is filed by a solicitor in respect of a sum of money exceeding £10 due under a judgment or order, the solicitor shall be entitled to make a charge for attending to issue execution and the following provisions shall apply—

(a) the Scale shall be determined by the sum of money in respect of which the warrant of execution is issued, excluding the costs of issuing execution.

(b) the charge may be fixed and allowed without taxation.

(c) the charge shall be increased by $33\frac{1}{3}$ per cent where Scale B or Scale C is applicable.

66 (1) The charge of a solicitor for attending the hearing of a judgment summons shall not be allowed unless—

(a) the party for whom he appears does not reside or carry on business within the district of the court in which the summons is heard; or

(b) the summons is on a judgment or order of a court other than a county court; in either of which cases the judge may allow a charge if he thinks fit.

(2) Where a charge is allowed—

(a) the scale shall be determined by the sum of money in respect of which the judgment summons is issued, excluding the costs of issuing the judgment summons;

(b) the charge may be fixed and allowed without taxation;

(c) the charge shall be increased by $33\frac{1}{3}$ per cent where Scale B or Scale C is applicable.

179 Higher Scale. PLAINTIFF'S COSTS.

PRECEDENTS ON HIGHER SCALES PLAINTIFF'S COSTS

In the		County Court.		No. of Plaintiff	
Between		AB and CD	Plaintiff		Defendant.
No. in Scale	ITEM <i>Letter</i>	Scale A £ s. d.	Scale B £ s. d.	Scale C £ s. d.	
64	Letter before action . . .	0 2 0	0 3 6	0 3 6	
<i>Instructions</i>					
10(1)	Instructions to sue . . .	0 3 4	0 6 8	0 13 4	
<i>Particulars</i>					
1A	Preparing praecipe and particulars of claim including necessary copies (in case of liquidated demand) . . .	0 4 0	0 7 0	0 10 0	
1B	In other claims . . .	0 6 0	0 12 0	1 1 0	
<i>Counsel Settling</i>					
74	Counsel's fee settling particulars where allowed . . .	—	1 3 6	{ 1 3 6 to 2 4 6	

IV. COSTS

No. in Scale	ITEM	Scale A £ s. d.	Scale B £ s. d.	Scale C £ s. d.
35	Attending entering plaint . . .	0 3 4	0 6 8	0 6 8
	<i>Defence</i>			
34	Perusing defence . . .	0 3 0	0 4 0	0 5 0
	Or, per folio . . .	0 0 2	0 0 4	0 0 4
47	Attending plaintiff thereon, obtaining instructions . . .	0 3 4	0 6 8	0 6 8
	<i>Further Particulars</i>			
5	Preparing further particulars of claim including copies to file and to deliver . . .	0 2 0	0 3 0	0 5 0
	Or, per folio . . .	0 0 8	0 0 8	0 0 8
36	Attending to file . . .	0 2 0	0 3 4	0 3 4
36	Attending to deliver . . .	0 2 0	0 3 4	0 3 4
	<i>Directions</i>			
21	Preparing notice of applica- tion for directions and copies . . .	0 2 0	0 3 0	0 5 0
63	Attending obtaining appoint- ment . . .	0 2 0	0 3 4	0 3 4
8	Service by post . . .	0 1 0	0 1 6	0 1 6
49	Attending application . . .	0 3 4 to 0 10 0	0 5 0 to 0 13 4	0 6 8 to 1 1 0
	<i>Particulars of Defence</i>			
22	Notice of application for further particulars of de- fence . . .	0 1 6	0 2 0	0 2 6
63	Attending obtaining appoint- ment . . .	0 2 0	0 3 4	0 3 4
8	Service by post . . .	0 1 0	0 1 6	0 1 6
49	Attending application . . .	0 3 4 to 0 10 0	0 5 0 to 0 13 4	0 6 8 to 1 1 0
34	Perusing further particulars Or, per folio . . .	0 3 0 0 0 2	0 4 0 0 0 4	0 5 0 0 0 4
	<i>Notice for Defence</i>			
22	Notice to defendant to state nature of defence . . .	0 1 6	0 2 0	0 2 6
	<i>Defendant's Directions</i>			
49	Attending defendant's appli- cation for directions . . .	0 3 4 to 0 10 0	0 5 0 to 0 13 4	0 6 8 to 1 1 0
	<i>Interrogatories</i>			
12	Instructions for interroga- tories . . .	0 3 4	0 6 8	0 6 8
25	Drawing same and copy to file . . .	0 2 6	0 5 0	0 6 8
	Or per folio . . .	0 0 4	0 0 8	0 1 0
74	Fee to Counsel to settle (if allowed) . . .	—	1 3 6	{ 1 3 6 2 4 6

No. in Scale	ITEM	Scale A £ s. d.	Scale B £ s. d.	Scale C £ s. d.
21	Notice of application for leave to deliver including copies to file and serve	0 2 0	0 3 0	0 5 0
	Service	0 1 0	0 1 6	0 1 6
		0 3 4	0 5 0	0 6 8
49	Attending application	to 0 10 0	to 0 13 4	to 1 1 0
33	Copy receipt for deposit, per folio	0 0 2	0 0 4	0 0 4
33	Copy interrogatories for service, per folio	0 0 2	0 0 4	0 0 4
8	Service of interrogatories, order and receipt	0 1 0	0 1 6	0 1 6
34	Perusing answers	0 3 0	0 4 0	0 5 0
	Or per folio	0 0 2	0 0 4	0 0 4

Defendant's Interrogatories

47	Attending plaintiff on defendant's interrogatories, obtaining instructions	0 3 4	0 6 8	0 6 8
12	Instructions for affidavit in answer	0 3 4	0 6 8	0 6 8
25	Drawing same and copy to file	0 2 6	0 5 0	0 6 8
	Or per folio	0 0 4	0 0 8	0 1 0
43	Attending plaintiff being sworn	0 2 0	0 3 4	0 6 8
36	Attending to file	0 2 0	0 3 4	0 3 4
33	Copy for defendant	0 0 2	0 0 4	0 0 4
36	Attending to deliver	0 2 0	0 3 4	0 3 4

Discovery of Documents

21	Notice of application for discovery of documents, including copies to file and serve	0 2 0	0 3 0	0 5 0
8	Service	0 1 0	0 1 6	0 1 6
		0 3 4	0 5 0	0 6 8
49	Attending application	to 0 10 0	to 0 13 4	to 1 1 0
34	Perusing defendant's affidavit	0 3 0	0 4 0	0 5 0
	Or per folio	0 0 2	0 0 4	0 0 4

Affidavit of Documents

12	Instructions for affidavit of documents	0 3 4	0 6 8	0 6 8
29	Drawing and engrossing same	0 2 6	0 5 0	0 5 0
	Or per folio	0 0 4	0 0 8	0 1 0
43	Attending plaintiff being sworn	0 2 0	0 3 4	0 6 8
36	Attending filing	0 2 0	0 3 4	0 3 4
33	Copy for defendant, per folio	0 0 2	0 0 4	0 0 4
36	Attending to deliver	0 2 0	0 3 4	0 3 4

No.in Scale	ITEM	Scale A			Scale B			Scale C		
		£	s.	d.	£	s.	d.	£	s.	d.
	<i>Notice to produce</i>									
20	Preparing notice to produce and copy	0	3	0	0	4	0	0	5	0
8	Service	0	1	0	0	1	6	0	1	6
34	Perusing defendant's notice to produce	0	3	0	0	4	0	0	5	0
	Or per folio	0	0	2	0	0	4	0	0	4

Notice to Admit

20	Preparing notice to admit and copy	0	3	0	0	4	0	0	5	0
8	Service	0	1	0	0	1	6	0	1	6
38	Attending producing docu- ments for inspection . .	0	3	4	0	6	8	0	6	8
	Or per hour	—			0	6	8	0	6	8
39	Attending defendant's solic- itor on his signing admis- sion	0	2	0	0	3	4	0	6	8
34	Perusing defendant's notice to admit	0	3	0	0	4	0	0	5	0
	Or per folio	0	0	2	0	0	4	0	0	4
38	Attending inspecting docu- ments	0	3	4	0	6	8	0	6	8
	Or per hour	—			0	6	8	0	6	8
80	Travelling expenses (if applic- able) not exceeding . .	0	10	0	1	0	0	1	0	0

Admission of Facts

20	Preparing notice to admit facts and copy	0	3	0	0	4	0	0	5	0
8	Service	0	1	0	0	1	6	0	1	6
47	Attending plaintiff on defen- dant's admissions . . .	0	3	4	0	6	8	0	6	8
34	Perusing defendant's notice to admit facts	0	3	0	0	4	0	0	5	0
	Or per folio	0	0	2	0	0	4	0	0	4
47	Attending plaintiff thereon .	0	3	4	0	6	8	0	6	8
20	Drawing admission of facts and copies	0	3	0	0	4	0	0	5	0
36	Attending to deliver . . .	0	2	0	0	3	4	0	3	4

Advice on Evidence

17B	Instructions to Counsel to advise on evidence, if given in writing	—			0	3	4	0	6	8
								1	3	6
75	Fee to Counsel	—			1	3	6	{ to 2 4 6		

No. in Scale	ITEM	Scale A £ s. d.	Scale B £ s. d.	Scale C £ s. d.
<i>Summons to Witness</i>				
40	Summons to witness, including attending obtaining leave to serve or issue in blank, issuing and sealing	0 2 0	0 3 0	0 5 0
6	Service	0 5 0	0 5 0	0 5 0
41	Attending witness arranging attendance without subpoena	0 2 0	0 3 0	0 5 0
66	Circular letter to witness to attend, each	0 1 0	0 1 0	0 1 0
<i>Minutes of Evidence</i>				
15	Examining and taking proof of evidence, where Counsel not engaged, each witness	0 2 0	0 3 4	0 6 8
	If exceeding six folios, for each additional folio	0 0 6	0 1 0	0 1 0
<i>Minutes of Fact or Argument</i>				
16	Preparing minutes of fact or argument	{ 0 3 4 to 0 15 0	{ 0 6 8 to 1 1 0	{ 0 10 6 to 2 2 0
32	Copy documents for use of the Judge, per folio	0 0 2	0 0 4	0 0 4
<i>Attending Court</i>				
54	Attending court conducting cause, trial concluded or part heard and adjourned	{ 0 15 0 to 1 1 0	{ 1 1 0 to 2 2 0	{ 1 1 0 to 3 3 0
56	If trial not concluded, for each day or part of a day on which it is continued (with or without Counsel)	0 10 0	{ 0 15 0 to 1 1 0	{ 1 1 0 to 2 2 0
59B	Attending court when action referred	0 10 0	0 15 0	1 1 0
57	Attending court when trial adjourned for want of time or upon payment of the costs of the day in lieu of items 54 or 55 (with or without Counsel)	0 10 0	{ 0 15 0 to 1 1 0	{ 1 1 0 to 2 2 0
80	Travelling expenses (if applicable), not exceeding	0 10 0	1 0 0	1 0 0
<i>Brief to Counsel</i>				
14	Instructions for brief	{ 0 6 8 to 0 10 0	{ 0 10 6 to 3 3 0	{ 1 1 0 to 6 6 0

No. in Scale	ITEM	Scale A	Scale B	Scale C
		£ s. d.	£ s. d.	£ s. d.
19	Drawing brief, per folio .	0 1 0	0 1 0	0 1 0
	not ex- ceeding	0 10 0		
33	Copy for Counsel, per folio .	0 0 2	0 0 4	0 0 4
32	Copy necessary documents to accompany, per folio .	0 0 2	0 0 4	0 0 4
67	Fee to Counsel therewith .	2 4 6	2 4 6	3 5 6
68	No local bar fee .	1 3 6	2 4 6	2 4 6
51	Attending Counsel with brief	0 3 4	0 3 4	0 6 8
52	Attending appointing confer- ence and attending thereat	—	0 6 8	0 13 4
69	Fee to Counsel .	—	1 6 0	1 6 0

Trial

55 or 56	Attending court with Counsel when trial concluded or part heard and adjourned	0 10 0	0 15 0 to 1 1 0	1 1 0 to 2 2 0
80	Travelling expenses, not ex- ceeding .	0 10 0	1 0 0	1 0 0

Costs

31	Drawing bill of costs and copy, per folio .	0 0 4	0 0 8	0 0 8
33	Copy for defendant .	0 0 2	0 0 4	0 0 4
63	Attending obtaining appoint- ment .	0 2 0	0 3 4	0 3 4
22	Notice of taxation .	0 1 6	0 2 0	0 2 6
8	Service .	0 1 0	0 1 6	0 1 6
62A	Attending taxation .	0 3 4	0 6 8	0 6 8 to 1 1 0
81(i)	Travelling expenses (if ap- plicable) not exceeding .	0 4 0	0 7 0	0 7 0
81(ii)	Agency correspondence .	0 4 0	0 7 0	0 7 0

Postages

79	Postages, etc. .	0 1 0	0 2 0	0 3 4
	to	0 2 0	to	to
		0 3 4		0 6 8

Plans

76	Plans, drawings, etc. (not exceeding) .	1 1 0	2 2 0	3 3 0
	Witnesses .			

193 Higher Scale. DEFENDANT'S COSTS.

DEFENDANT'S COSTS

No. in Scale	ITEM	Scale A £ s. d.	Scale B £ s. d.	Scale C £ s. d.
<i>Instructions</i>				
10	Instructions to defend	0 3 4	0 6 8	0 13 4
34	Perusing particulars of claim	0 3 0	0 4 0	0 5 0
	Or per folio	0 0 2	0 0 4	0 0 4
<i>Security for Costs</i>				
22	Notice of application for security for costs	0 1 6	0 2 0	0 2 6
12	Instructions for affidavit in support	0 3 4	0 6 8	0 6 8
29	Drawing and engrossing same	0 2 6	0 5 0	0 5 0
	Or per folio	0 0 4	0 0 8	0 1 0
8	Service	0 1 0	0 1 6	0 1 6
<i>Further Particulars</i>				
22	Notice for further and better particulars of claim	0 1 6	0 2 0	0 2 6
8	Service	0 1 0	0 1 6	0 1 6
34	Perusing further particulars	0 3 0	0 4 0	0 5 0
	Or per folio	0 0 2	0 0 4	0 0 4
<i>Defence</i>				
2	Preparing defence and copies	0 3 0	0 5 0	0 6 8
	Or per folio beyond three	—	0 1 0	0 1 0
36	Attending filing	0 2 0	0 3 4	0 3 4
	The remaining charges are as given in the plaintiff's costs			

211 County Courts Act, 1919, sect. 12. See now County Courts Act, 1934.

Remitted Action. Where an action is remitted to the County Court from the High Court and costs at the time of remission are made costs in the cause, those costs are to be taxed on the High Court scale. (*Simmons & Son Ltd. v. Wiltshire* (1938), 82 S.J. 604.)

213 Rule 10. In sub-paragraph (c) of paragraph (2) after the words "October, 1932" insert the words "and before the 13th day of April, 1936."

After sub-paragraph (c) insert as paragraph (d)—

“(d) if done after the 12th day of April, 1936, by 33½ per centum.”

- 214 At end of paragraph (2) delete “the Solicitors Act, 1843” and insert “the Solicitors Act, 1932.”

In sub-paragraph (a) of paragraph (4) delete “the Solicitors’ Remuneration Act, 1881,” and insert “sect. 56 of the Solicitors Act, 1932.”

(Rules of the Supreme Court (No. 1), 1936.)

- 231 Rule 27 (29a). Delete “the Solicitors Act, 1843” and insert “the Solicitors Act, 1932.”

(Rules of the Supreme Court (No. 1), 1936.)

- 235 Order LXV. Rule 27 (40). Add, “The Taxing Master may tax the costs of such objections and add them to or deduct them from any sum payable by or to any party to the taxation.” (Rules of the Supreme Court (No. 3), 1937.)

- 237 Order LXV. Rule 27 (48). Delete first paragraph and read—

“As to refresher fees when any cause or matter is to be tried or heard upon *viva voce* evidence in open court if the total time occupied by the trial whether wholly on the first day or partly on that day and partly on any subsequent day or days shall exceed a period of five hours the Taxing Master may in respect of the excess allow for every complete period of five hours (if any) and for any less period not included in any such complete period, the following fees.” (Rules of Supreme Court (No. 3), 1937.)

- 239 Order LXV. Rule 28. Delete “proviso (ii) to subsect. 1 of sect. 11 of the County Courts Act, 1919,

as amended by sect. 20 of the Administration of Justice Act, 1925," and insert "sub-sect. 4 of sect. 47 of the County Courts Act, 1934." (Rules of Supreme Court (No. 3), 1937.)

250 Appendix N.

Fee No. 106 revoked. Substitute

106. And for printing, the	£	s.	d.	£	s.	d.
amount actually and properly paid to the printer,						
not exceeding (per folio)	0	2	8	0	2	8

(Rules of the Supreme Court (No. 1), 1938.)

259 **Witnesses.** As to allowances to plaintiffs and defendants, see Masters' Practice Notes, No. 96 (Original Volume, p. 327).

260 **King's Bench Division Fixed Costs.** Table including the $33\frac{1}{3}$ per cent increase.

FOUR-DAY COSTS

TOWN CASES

(Where the defendant resides within five miles of the General Post Office.)

	£	s.	d.
For one defendant	5	0	0
For each extra defendant		8	0
<i>Country or Agency Cases</i>			
For one defendant	5	10	0
For each extra defendant		8	0

[Mileage may be allowed in addition to the above.]

The above applies to all writs for service within the jurisdiction, endorsed with liquidated demand only (whether specially endorsed or not) when the sum claimed amounts to £20 or upwards.

In addition to the above, the following may be added to the endorsement of the writ, to provide for the contingency of substituted service—

"And also in case the plaintiff obtains an order for substituted service, the further sum of £ : : or such sum as may be allowed on taxation."

The amount to be inserted shall be—

	£	s.	d.
When the claim is for £20 and over, but less than £40	1	11	0
£40 or over, but less than £100	2	4	0
£100 or over	2	17	6

Usual costs Endorsed on Writ where service out of Jurisdiction Ordered.

	£	s.	d.
For service in Scotland, Northern Ireland, or the Isle of Man	7	13	6
For service in all other places out of the jurisdiction	10	9	6

261 Judgment in Default. JUDGMENT IN DEFAULT OF APPEARANCE OR OF DEFENCE WHERE THE CLAIM IS FOR A DEBT OR LIQUIDATED DEMAND ONLY.

1. Under £20 (where less than £40 is recovered) no costs £ s. d.
unless allowed by master.

(This includes cases where the amount claimed exceeds £20 but the amount for which judgment is to be signed is reduced below that amount by payment, since action brought or otherwise.) If costs allowed, Scale 2 (a) *infra* to be applied.

2. For £20 or over but less than £40 (where less than £40 is recovered) whether specially endorsed or not—

(a) When judgment obtained within 28 days after service of the writ or within such further time as may be allowed by a master:

In country and agency cases, and where service effected more than five miles from General Post Office	6	14	6
Town cases	5	18	6

(b) In other cases no costs unless allowed by master, and if so allowed, Scale 2 (a) *supra* to be applied.

3. Where £40 or over but less than £100 is recovered and the claim is specially endorsed—

In country and agency cases, and where service effected more than five miles from General Post Office	7	15	6
Town cases	6	19	6

4. Where £40 or over but less than £100 is recovered and the claim is not specially endorsed.

In country and agency cases, and where service effected more than five miles from General Post Office	6	14	6
Town cases	5	18	6

5. Where £100 or over is recovered, and the claim is specially endorsed—

In country and agency cases, and where service effected more than five miles from General Post Office	8	3	6
Town cases	7	7	6

6. Where £100 or over is recovered, and the claim is not specially endorsed—	£	s.	d.
In country and agency cases, and where service effected more than five miles from General Post Office	7	2	6
Town cases	6	6	6
<i>Additional allowances applicable to all the above cases—</i>			
For each extra service effected—			
(a) In the same district as the first	8	0	
(b) In a different district from that of previous service, or services (or 8s. and mileage)	15	0	
Where substituted service ordered and effected—			
£20 and over, but less than £40	1	11	0
£40 and over, but less than £100	2	4	0
£100 or over	2	17	6
Mileage may be allowed in addition in all the above cases.			

262 Order XIV. JUDGMENT UNDER ORDER XIV.

	Town Cases			Country and Agency		
	£	s.	d.	£	s.	d.
1. Under £20 (where less than £20 recovered) no costs without order and if allowed, Scale 2 (a) <i>infra</i> to be applied, unless otherwise ordered.						
2. For £20 or over but less than £40 (where less than £40 recovered).						
(a) Where the plaintiff within 28 days after service of the writ, or within such further time as may be allowed by the master obtains an order for judgment—either unconditionally or unless a sum of £20 or over is paid into court or to the plaintiff's solicitor.	9	18	6	10	11	6
(b) In other cases no costs without order. If order made, Scale 2 (a) <i>supra</i> to be applied unless otherwise ordered.						
3. Where £40 or over but less than £100 is recovered	10	11	6	11	5	0
4. Where £100 or over is recovered	11	5	0	11	18	6
<i>Additional allowances in all the above cases—</i>						
(1) For each additional defendant, served in the same district, appearing by same solicitor	8	0		8	0	
(2) For each additional defendant, served in a different district or appearing by a different solicitor	15	0		15	0	
(3) Where an affidavit of service of summons is required				14	0	
(4) Where notice of appearance is not given on the day on which the appearance is entered, and plaintiff makes an affidavit of service for the purpose of judgment in default				10	0	

	<i>Town Cases</i>	<i>Country and Agency</i>
	<i>£ s. d.</i>	<i>£ s. d.</i>
(5) Costs of adjournment of summons		9 0
(6) Where substituted service ordered and effected—		
£20 and over, but less than £40		1 11 0
£40 and over, but less than £100		2 4 0
£100 and over		2 17 6
(7) Mileage may be allowed in addition in all the above cases.		

263 Discontinuance. JUDGMENT ON DISCONTINUANCE PAYMENT INTO COURT.

(Order XXVI, Rule 3—Order XXII 7).

Costs of judgment £1 4 6

Judgments Extension Act. JUDGMENTS EXTENSION ACT.

Where a judgment is registered under the Judgments Extension Act within twelve months of its date, without order.

Costs of registration £3 17 6

264 Removals. REMOVALS FROM INFERIOR COURTS. MAYOR'S AND CITY OF LONDON COURT.

Costs of removal, inclusive of costs
of issuing execution £1 12 6

The further costs relating to the execution (viz. for obtaining warrant, instructing officer, and receiving amount realised) may be endorsed to be levied, but should not in ordinary cases exceed the sum of 10s. in addition to payment of warrant.

SALFORD HUNDRED COURT AND LIVER- POOL COURT OF PASSAGE

Costs of removal £3 8 6

(This sum should be included in the order for removal.)

Garnishee Proceedings. GARNISHEE PROCEEDINGS.**JUDGMENT CREDITOR'S COSTS**

	£	s.	d.
In respect of debts up to £5	No costs		
In respect of debts from £5 to £10	1	4	0
In respect of debts over £10	4	0	0
Where garnishee fails to attend hearing and an affidavit of service is required <i>extra</i>	14	0	

GARNISHEE'S COSTS

In town cases (no affidavit)	18	0	
In town cases (with affidavit)	2	0	6
In country cases (no affidavit)	1	8	0
In country cases (with affidavit)	2	12	6

CHARGING ORDERS

CHARGING } Costs allowed	3	5	6
ORDERS }			

ISSUING EXECUTION

EXECUTION. Costs allowed	2	2	0
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267 Subpoenas ad testificandum.

	£	s.	d.
Subpoena ad test (for three witnesses) and attending to issue	6	8	
Paid issuing (each witness)	2	6	

Subpoena duces tecum

	£	s.	d.
Subpoena duces tecum (for three witnesses) and attending to issue	6	8	
Paid issuing (each witness)	2	6	

271 Specially Endorsed Writ.

	£	s.	d.
Writ of summons, copy to file and attending to issue	6	8	
Instructions for special endorsement	13	4	
Special endorsement	5	0	

272 Notice of Trial.

	£	s.	d.
Notice of trial, copy and service	4	0	

273 Subpoena ad testificandum.

	£	s.	d.
Subpoena ad test (for three witnesses) and attending to issue	6	8	
Paid issuing (each witness)	2	6	

Subpoena duces tecum.

	£	s.	d.
Subpoena duces tecum (for three witnesses) and attending to issue	6	8	
Paid issuing (each witness)	2	6	

274 Judgment.

	£	s.	d.
Attending for certificate of result of trial		3	4
Drawing judgment		3	4
Attending to enter		6	8

276 Defence.

	£	s.	d.
Instructions for defence		6	8
If with counterclaim		13	4

287 Matrimonial Causes Rules, 1924. The Matrimonial Causes Rules, 1924, have been revoked and as from the 1st January, 1938, the Matrimonial Causes Rules, 1937, apply. The relevant Rules are as under—

68. Taxation. All bills of costs shall be referred to a Registrar for taxation and may be taxed by him or such other taxing officer as the President may appoint for the taxation of bills. Such bills shall be filed and notice of the time appointed for taxation shall be given to the party filing the bill at the address furnished by him, and he shall give to the other parties to be heard on the taxation at least three clear days' notice of the appointment and shall at the same time or previously deliver to them a copy of the bill to be taxed.

69. Taxation in Absence of Party. When any party to be heard on the taxation does not attend at the time appointed, the Registrar or taxing officer may nevertheless proceed to tax the Bill after the expiration of a quarter of an hour, upon being satisfied by affidavit or otherwise that any party not in attendance had due notice of the time appointed.

70. Taxation as between Solicitor and Client. The bill of costs of a solicitor shall be taxed on his request as against his client after sufficient notice given to the person or persons liable for the payment

thereof, or on the request of such person after sufficient notice given to the solicitor.

71. Application of Order LXV. In matrimonial causes and matters to which these Rules relate, costs allowed to solicitors and the taxation of such costs shall, subject to the provisions of these Rules, be in accordance with the provisions of Order LXV of the Rules of the Supreme Court, so far as the same are applicable thereto.

72. Taxing Fees. The fees payable on the taxation of any bill of costs shall be paid by the party on whose application the bill is taxed and shall be allowed as part of such bill.

73. Certificate of Taxation. (1) Upon the Registrar's certificate as to costs being signed, an order of the court for payment of the amount within seven days, or such other time as the Registrar shall direct, may issue.

(2) An order for payment of costs contained in a decree *nisi*, if drawn up before the decree *nisi* is made absolute, shall direct payment into court, and such costs shall not be paid out of court to the party entitled to receive them under the decree *nisi* until that decree has been made absolute; but a wife who is unsuccessful in a cause and who at the hearing of the cause has obtained an order of the judge for costs, may nevertheless proceed at once to obtain payment of such costs after allowance thereof on taxation.

74. Security for Wife's Costs. (1) A wife who is petitioner or who has entered an appearance to a petition may at the hearing of an application for a commission or for letters of request or for the appointment of a special examiner to examine a

party or witness who is outside the jurisdiction of the court, ask for security for her costs of and incidental to such examination or may apply for security at any time after such an examination is granted, and the Registrar, after ascertaining what is a sufficient sum of money to cover the costs of the wife of and incidental to the examination, may, unless the husband shall prove that the wife has sufficient separate estate or show other good cause, order the husband to pay into court or to secure the costs of and incidental to the examination within such time as he may fix.

(2) A wife who has filed an answer may, after the Registrar's certificate that the pleadings are in order has been given or at an earlier stage with leave, file her bill of costs for taxation as against her husband and ask for security for her costs of and incidental to the trial or hearing of the cause, provided that a wife who is a poor person may not file her bill of costs without leave.

(3) The Registrar or taxing officer to whom such bill of costs is referred for taxation shall ascertain what is a sufficient sum of money to cover the costs of the wife of and incidental to the trial or hearing of the cause, and may, unless the husband shall prove that the wife has sufficient separate estate or show other good cause, order the husband to pay to the wife or into court her costs up to the setting down of the cause, and to pay into court or secure the costs of and incidental to the trial or hearing within such time as he may fix, and may direct a stay of the proceedings until the order is complied with.

(4) The bond taken to secure the costs of a wife of and incidental to such an examination or to

the trial or hearing of a cause shall be given to the Senior Registrar by the name of the Principal Probate Registrar and shall be filed and shall not be delivered out or sued upon without leave.

75. Payment of Money Out of Court. Persons entitled to payment of money out of court on applying for the same shall lodge in the Divorce Registry duplicate forms in writing setting forth the date on which the money applied for was paid into court, the amount applied for, and the name and address of the person to receive the same.

292 Precedent of Petitioner's Bill of Costs. The fee for setting down cause for trial is £4 12s. 6d.

PRECEDENTS

The following Precedents have been incorporated as being useful in everyday practice—

COUNTY COURT

(1) Companies Act, 1929. Petitioning Creditor's costs of obtaining winding-up Order.

(2) Costs of Creditors appearing in support of Petition.

(3) Workmen's Compensation Act, 1925. Applicant's costs of Arbitration.

(4) Workmen's Compensation Act, 1925. Respondent's costs of Arbitration.

CHANCERY DIVISION

(5) Applicant's Costs of Originating Summons.

(6) Respondent's Costs of Originating Summons.

(1)

Under the Companies (Winding-up) Rules, 1929 (Rule 189), all costs properly incurred in a winding-up by a county court shall be allowed on the lower scale in Appendix N of the Rules of the Supreme Court as increased and shall be taxed by the registrar in person.

In the..... County Court No.
Re A B Company Limited
Ex parte X Y. Petitioning Creditors.

Item		Disburse- ments	Charges
		£ s. d.	£ s. d.
<i>Instructions.</i>	Instructions for Petition		0 13 4
	Attending obtaining copy Memorandum and Articles of Association of the Company		0 6 8
<i>Petition.</i>	Drawing Petition (per folio 1s.).		
	Engrossing same in duplicate (per folio 4d.).		
	Attending petitioners on their signing petition		0 13 4
	Attending presenting Petition		0 6 8
	Paid court fee		
<i>Affidavit verifying Petition.</i>	Instructions for affidavit verifying Peti- tion		0 6 8
	Drawing same (per folio 1s.).		
	Engrossing (per folio 4d.).		
	Marking Petition as exhibit		0 1 0
	Attending deponent being sworn		0 6 8
	Paid Commissioner's fees	0 3 4	
	Copy affidavit for office copy (per folio 4d.).		
	Paid marking (per folio 3d.)		
<i>Service of Petition.</i>	Service of Petition		0 5 0
	Drawing and engrossing affidavit of ser- vice and attending to swear		0 5 0
	Marking exhibit		0 1 0
	Paid Commissioner's fees	0 3 4	
<i>Advertise- ment of Petition.</i>	Drawing advertisement (per folio 1s.).		
	Copies for insertion (each, per folio 4d.).		
	Attendances arranging insertion, each .		0 6 8
	Paid		
<i>Provisional Liquidator.</i>	Instructions for application for the appointment of the official receiver as provisional liquidator		0 6 8
	Preparing summons and attending to issue		0 6 8
	Paid		
	Copy summons for Chambers		0 2 0
	The like for service		0 2 0
	Service by post		0 1 6
	Instructions for affidavit in support of summons		0 6 8
	Drawing same (per folio 1s.).		
	Engrossing (per folio 4d.).		
	Attending deponent being sworn		0 6 8

	Item	Disbursements	Charges
		£ s. d.	£ s. d.
	Paid Commissioner's fee	0 2 0	
	Attending Summons when order made		0 13 4
	Drawing Order and attending to enter		0 13 4
	Copy for filing		0 2 0
	Copy for service on Official Receiver		0 2 0
	Service		0 1 6
	Copy for service on the Company		0 2 0
	Service		0 1 6
<i>Motion.</i>	Drawing notice of motion to restrain action by creditor pending hearing of petition (per folio 1s.).		
	Fair copy (per folio 4d.).		
	Attending obtaining leave for short return		0 6 8
	Instructions for affidavit in support of motion		0 6 8
	Drawing same (per folio 1s.).		
	Engrossing (per folio 4d.).		
	Attending deponent being sworn		0 6 8
	Paid Commissioner's fee	0 2 0	
	Attending filing notice and affidavit		0 6 8
	Copy notice and affidavit for service (per folio 4d.).		
	Service		0 5 0
	Attending hearing of motion when Order made		1 1 0
	Paid		
<i>Statement of Compliance.</i>	Drawing statement of compliance with the Rules and fair copy		0 5 0
	Attending Registrar therewith and producing advertisements		0 6 8
<i>Affidavits in Opposition.</i>	Perusing affidavits in opposition to Petition (each, per folio 4d.).		
<i>Brief.</i>	Instructions for Brief on hearing of Petition (according to circumstances). <i>This item is only allowed where witnesses are called.</i>		
	Drawing Brief (per folio 1s.).		
	Copy for Counsel (per folio 4d.).		
	Copy documents to accompany (each, per folio 4d.).		
	Attending Counsel with Brief		0 6 8
	Paid his fee and clerk.		
	Attending appointing Conference		0 6 8
	Paid fee to Counsel and clerk.		
	Attending Conference		0 13 4
<i>Hearing.</i>	Attending hearing of Petition with Counsel when Order made		1 1 0
	Paid		

	Item	Disbursements	Charges
		£ s. d.	£ s. d.
<i>Costs.</i>	Attending lodging Brief and bespeaking Order		0 6 8
	Drawing Bill of Costs and copy for the Registrar (per folio 8d.).		0 6 8
	Attending obtaining appointment to tax		0 13 4
	Attending taxing		— — —
	Letters, etc. (according to circumstances)		— — —
	Taxed off	£	
	Add authorised increase .£		
	Add disbursements . .£		
	Taxing fee£		
	Allowed at£		
	The order is prepared and served by the Registrar and the attendance of a solicitor to settle is only required in special circumstances.		

(2)

COSTS OF CREDITOR APPEARING IN SUPPORT

	Item	Disbursements	Charges
		£ s. d.	£ s. d.
<i>Instructions.</i>	Instructions to appear in support of Petition		0 6 8
	Attending searching file of Company		0 6 8
	Paid search fee	0 1 0	
<i>Petition.</i>	Writing Petitioning Creditor's solicitor bespeaking copy Petition		0 3 6
	Paid for same (amount paid).		
	Perusing (per folio 4d.).		
<i>Notice of Intention to Appear.</i>	Drawing notice of intention to appear to support petition (per folio 1s.).		
	Fair copy (per folio 4d.).		
	Service on Petitioning creditor's solicitor		0 2 6
<i>Brief.</i>	As in previous Precedent.		
<i>Hearing.</i>	Attending Court on hearing of Petition when Order made		1 1 0
<i>Costs.</i>	As in previous Precedent.		

(3)

*In the.....County Court**In the Matter of the Workmen's Compensation Act, 1925**No. of Matter**and**In the Matter of an Arbitration**Between**A B of etc.**Applicant**and**C D of etc.**Respondent*Applicant's Costs of Arbitration to be taxed under
Scale [] pursuant to

Award dated.....193..

No. in Scale	Item	A	B	C
		£ s. d.	£ s. d.	£ s. d.
64	Letter before action . . .	0 2 0	0 3 6	0 3 6
10	Instructions to sue . . .	0 3 4	0 6 8	0 13 4
1s	Drawing application for arbitration and necessary copies	0 6 0	0 12 0	1 1 0
35	Attending to enter . . .	0 3 4	0 6 8	0 6 8
34	Perusing answer by respondent	0 3 0	0 4 0	0 5 0
47	Attending applicant thereon.	0 3 4	0 6 8	0 6 8
15	Examining and taking evidence of witnesses, each witness . . .	0 2 0	0 3 4	0 6 8
	If exceeding six folios, for each additional folio . . .	0 0 6	0 1 0	0 1 0
16	Preparing minutes of fact or argument, not exceeding .	0 15 0	1 1 0	2 2 0
41	Attending witnesses arranging attendance without subpoena, each witness . .	0 2 0	0 3 0	0 5 0
54	Attending court conducting cause	0 15 0 to 1 1 0	1 1 0 to 2 2 0	1 1 0 to 3 3 0

No. in Scale	Item	A	B	C
		£ s. d.	£ s. d.	£ s. d.
31	Drawing bill of costs, including copy for the registrar, per folio	0 0 4	0 0 8	0 0 8
33	Copy for respondent's solicitor, per folio	0 0 2	0 0 4	0 0 4
63	Attending obtaining appointment	0 2 0	0 3 4	0 3 4
22	Notice of taxation	0 1 6	0 2 0	0 2 6
8	Service by post	0 1 0	0 1 6	0 1 6
62	Attending taxation	0 3 4	0 6 8	0 6 8
				to
				1 1 0
79	Letters, carriage of documents, etc., not exceeding	0 1 0	0 2 0	0 3 4
		to	to	to
		0 2 0	0 3 4	0 6 8
	Add authorised increase where column B or C is applicable.			
	Witnesses—See Scale p. 86.			

(4)

RESPONDENT'S COSTS

No. in Scale	Item	A	B	C
		£ s. d.	£ s. d.	£ s. d.
10	Instructions to defend	0 3 4	0 6 8	0 13 4
34	Perusing application for arbitration	0 3 0	0 4 0	0 5 0
	Or, per folio	0 0 2	0 0 4	0 0 4
2	Drawing answer by respondent, including necessary copies	0 3 0	0 5 0	0 6 8
36	Attending filing	0 2 0	0 3 4	0 3 4
41	Attending witnesses arranging attendance without subpoena, each	0 2 0	0 3 0	0 5 0
16	Preparing minutes of fact or argument, not exceeding	0 15 0	1 1 0	2 2 0

No. in Scale	Item	A	B	C
		£ s. d.	£ s. d.	£ s. d.
54	Attending court conducting cause	0 15 0 to 1 1 0	1 1 0 to 2 2 0	1 1 0 to 3 3 0
	Drawing bill of costs, etc. (as in previous Precedent). Add authorised increase to columns B or C. Witnesses—See Scale, p. 86.			

(5)

*In the High Court of Justice**Chancery Division**Mr. Justice**Applicant's Costs of Originating Summons.*

		Lower Scale	Higher Scale
		£ s. d.	£ s. d.
<i>Instructions.</i>	Instructions for originating summons	0 6 8	0 6 8
	Or, not exceeding	1 1 0	1 1 0
<i>Summons.</i>	Preparing originating summons and copy, not exceeding	1 1 0	1 1 0
	Paid fee to Counsel to settle and clerk	1 3 6	1 3 6
	Attending him	0 3 4	0 6 8
	Copy Summons for Central Office	0 2 0	0 2 0
	Or, per folio	0 0 4	0 0 4
	Copy for service	0 2 0	0 2 0
	Or, per folio	0 0 4	0 0 4
	Attending sealing summons	0 13 4	0 13 4
	Paid sealing.		
	Copy Summons for Chambers	0 2 0	0 2 0
	Or, per folio	0 0 4	0 0 4
	Service	0 5 0	0 5 0
	Mileage, per mile beyond two	0 1 0	0 1 0

		Lower Scale	Higher Scale
		£ s. d.	£ s. d.
<i>Affidavit in Support.</i>	Instructions for affidavit in support of summons	0 6 8	0 6 8
	Drawing same, per folio	0 1 0	0 1 0
	Paid fee to Counsel to settle and clerk.		
	Attending him	0 6 8	0 6 8
	Engrossing affidavit, per folio	0 0 4	0 0 4
	Marking exhibits (each)	0 1 0	0 1 0
	Attending deponent being sworn	0 6 8	0 6 8
	Paid Commissioner's fee.		
	Paid filing affidavit	0 2 6	0 2 6
	Copy for office copy, per folio	0 0 4	0 0 4
	Paid marking.		
	Notice of filing, copy and service	0 4 0	0 4 0
<i>Appearance.</i>	Attending searching for appearance (if no notice served) and for and obtaining certificate	0 6 8	0 6 8
	Paid search fee.		
	Paid for certificate.		
<i>Appointment to Hear Summons.</i>	Drawing and copy notice of appointment to hear summons and copy for service	0 1 6	0 1 6
	Copy Notice for Chambers	0 1 0	0 1 0
	Service	0 2 6	0 2 6
	[If filed in default—		
	Paid filing notice	0 2 6	0 2 6
	Copy notice for office copy, per folio	0 0 4	0 0 4
	Paid marking].		
	Attending Summons	0 13 4	0 13 4
	(Allowance will be fixed by the Master.)		
<i>Affidavits in Answer.</i>	Perusing affidavits in answer, each, per folio	0 0 4	0 0 4
	Paid for same.		
	Close copies, if agency, per folio	0 0 4	0 0 4
<i>Summons.</i>	Attending adjourned summons when same adjourned to judge	0 13 4	0 13 4
	(Allowance will be fixed by the Master.)		
<i>Adjournment into Court</i>	Attending summons before the judge when same adjourned into court	0 13 4	0 13 4
	Or, not exceeding	2 2 0	3 3 0
	Copy summons for the judge	0 2 0	0 2 0
	Or, per folio	0 0 4	0 0 4
	Copy necessary documents for the judge, each, per folio	0 0 4	0 0 4
<i>Brief.</i>	Instructions for Brief	1 1 0	2 2 0
	Drawing same (per folio 1s.).		
	Copy for Counsel (per folio 4d.).		

		Lower Scale	Higher Scale
		£ s. d.	£ s. d.
	Copy necessary documents to accompany, each, per folio 4d.		
	Attending Counsel therewith.		
	Paid his fee and clerk.		
	Attending appointing Conference .	0 3 4	0 6 8
	Paid fee to Counsel and clerk.		
	Attending conference	0 13 4	0 13 4
<i>Hearing.</i>	Attending court all day, case not reached	0 6 8	0 10 0
	Attending court on hearing of summons	0 13 4	1 1 0
	Or, not exceeding	2 2 0	2 2 0
<i>Order.</i>	Attending bespeaking minutes of order (if made in court)	0 6 8	0 6 8
	Close copy, per folio	0 0 4	0 0 4
	Notice of appointment to settle, copy and service	0 4 0	0 4 0
	Attending settling	0 6 8	0 13 4
	Or, not exceeding	1 1 0	3 3 0
	(If order printed, examining print) .	0 6 8	0 6 8
	Notice to pass, copy and service . .	0 4 0	0 4 0
	Attending passing	0 6 8	0 13 4
	Paid.		
<i>General Items.</i>	Attendances, per hour	0 6 8	0 6 8
	Letters, each	0 3 6	0 3 6
	Special letters	0 5 0	0 5 0
	Telegrams	0 5 0	0 5 0
<i>Costs.</i>	Copy order for the taxing master per folio	0 0 4	0 0 4
	Statement of parties	0 2 6	0 2 6
	Drawing costs and copy, per folio . .	0 0 8	0 0 8
	Attending taxing, from	0 6 8	0 6 8

(6)

DEFENDANT'S COSTS

		Lower Scale	Higher Scale
		£ s. d.	£ s. d.
<i>Instructions.</i>	Instructions to defend	0 6 8	0 13 4
	Attending accepting service of summons and giving undertaking to appear	0 6 8	0 6 8

		Lower Scale	Higher Scale
		£ s. d.	£ s. d.
<i>Summons.</i>	Perusing summons	0 6 8	0 13 4
	Or, per folio	0 0 4	0 0 4
<i>Appearance.</i>	Attending entering appearance . . .	0 6 8	0 6 8
	Paid entering.		
	Notice of appearance, copy and service .	0 4 0	0 4 0
<i>Affidavit in Support.</i>	Perusing affidavit in support of sum- mons, per folio	0 0 4	0 0 4
	Paid for same.		
	Close copy, if agency, per folio . . .	0 0 4	0 0 4
<i>Affidavit in Answer.</i>	Instructions for affidavit in answer . .	0 6 8	0 6 8
	Drawing same, per folio ls.		
	Paid fee to Counsel to settle and clerk.		
	Attending him	0 6 8	0 6 8
	Engrossing affidavit, per folio . . .	0 0 4	0 0 4
	Marking exhibits, each	0 1 0	0 1 0
	Attending deponent being sworn . . .	0 6 8	0 6 8
	Paid Commissioner's fees.		
	Paid filing affidavit.		
	Copy affidavit for office copy, per folio .	0 0 4	0 0 4
	Paid marking.		
	Notice of filing, copy and service . . .	0 4 0	0 4 0
<i>Summons, Brief etc.</i>	As in previous Precedent.		

The two foregoing Precedents contain only items which are more or less common to all Chancery proceedings commenced by originating summons. Chancery proceedings generally are of a varied nature and precedents of charges in many contingencies will be found in any of the standard books of Precedents.

VOLUME V
COUNTY COURT PRACTICE

VOLUME V

COUNTY COURT PRACTICE

- 6 **Registrar.** The registrar has power on the application of the parties and by leave of the judge to hear and determine *any action or matter* where the sum claimed or amount involved does not exceed £10. (Order XXIII, r. 1.) (County Court (No. 3) Rules, 1938.)

The powers conferred on the judge by Order XXIII, r. 4 (judgment where defendant does not appear), are exerciseable by the registrar with the leave of the judge, notwithstanding that the claim exceeds £10. (Order XXIII, r. 4, as amended by County Court (No. 3) Rules, 1938.) The former restriction on this power to actions of contract has been removed.

- 9 **Jurisdiction.** By the Administration of Justice (Miscellaneous Provisions) Act, 1938, the jurisdiction of the county court in actions of contract and tort and for money recoverable by statute (County Courts Act, 1934, ss. 40 and 41) is increased to £200. The defendant may, however, where the amount claimed exceeds £100, give notice objecting to the action being tried in the County Court, and where notice is given the action is transferred to the High Court. Notice of objection must be given to the registrar and the plaintiff within eight days of service of the summons, inclusive of the day of service. (Order XVI, r. 18, as amended by County Court Rules (No. 3), 1938.) Where the claim exceeds £100, a

notice (Form 99) must be annexed to the summons unless the parties have agreed that the county court shall have jurisdiction. Order XVI, r. 18, applies, with necessary modifications, to a counterclaim.

10 Section 42. Amended, see 13.

- 13 Abandonment of Excess.** Where a plaintiff has a cause of action for more than £200 in which, if it were not for more than £200, the court may have jurisdiction, he may abandon the excess and so give the court jurisdiction. If he has a cause of action exceeding £100, he may also abandon the excess and is thereupon deemed, for the purposes of sect. 44, to claim only £100. In any action where the plaintiff has abandoned part of his claim, heard by the county court, the plaintiff cannot recover more than £200 or £100 as the case may be, and the judgment is in discharge of all demands in respect of the cause of action and shall be entered accordingly (sect. 42 as amended by Administration of Justice (Miscellaneous Provisions) Act, 1938).

- 16 Transfer of Action of Tort from High Court to County Court.** Regard must also be had to the gravity of the case on an application for transfer under sect. 46. (*Stevens v. Walker*, [1936] 2 K.B. 215.) For recent cases, see also *Berridge v. Everard*, [1938] 1 All E.R. 717; *Evans v. Bartlam*, [1937] 2 All E.R. 646; *Culver v. Beard*, [1937] 1 All E.R. 301.

- 21 Joining Defendants.** Where two or more persons are made defendants, whether as jointly or as severally liable, the plaintiff may obtain judgment

against any one or more of the defendants and issue execution thereon, without prejudice to his right to proceed with the action against any other defendant. (County Court (No. 2) Rules, 1938.)

- 27 **Adding Defendants.** Order XV, r. 2, revoked as from 1st September, 1938. Delete and substitute:
“Where any person is ordered to be added or substituted as a defendant (except under Rule 11, see Original Volume, p. 29) the amended originating process must be served on the added or substituted defendant according to the Rules applicable to service of the originating process, and the proceedings are deemed to have begun against him only on service of the process on him.” (County Court (No. 2) Rules, 1938.)
- 35 **Infants' Contracts.** A hire-purchase agreement may not be for the benefit of an infant. (*Mercantile Union Guarantee Corporation Ltd. v. Ball*, [1937] 2 K.B. 498; 183 L.T.Jo. 453.)
- 39 **Commencement of Action.** An action against the guarantor of a hire-purchase agreement must be commenced in the court for the district in which the defendant resides or carries on business. (*R. v. Shoreditch County Court Registrar, ex parte Saxon Finance Corporation Ltd.* (1937), 184 L.T.Jo. 367.)
- 45 **Hire-purchase Claims.** Where a plaintiff claims recovery of goods under a hire-purchase agreement, he must state in his particulars—
(i) the date of the agreement and the parties thereto; and
(ii) the goods claimed; and
(iii) the amount of the hire-purchase price; and

(iv) the amount paid by or on behalf of the hirer; and

(v) the date when the right to recover possession of the goods accrued.

(Order VII, r. 7A, County Court (No. 3) Rules, 1938.)

Any application under sect. 12 (3) of the Hire-Purchase Act, 1938, may be heard and determined by the judge or by the registrar. In an action in which a postponed order under sect. 12 (4) of that Act has been made by the registrar, any application under sect. 13 may be heard and determined by the registrar. (County Court (No. 3) Rules, 1938.)

53 } **Ordinary Summons.** Order VIII, r. 5, delete "or
54 } if the judge of that district so directs, within the district of any other court" and read—

"Any process to be served or executed by bailiff may, if the judge of the court from which the process issues so directs, be served or executed within the district of any other court, by the bailiff of the court from which the process issues." (County Court (No. 1) Rules, 1938.)

55 **Successive Summons.** Where a default summons has been exchanged for an ordinary summons under Order X, r. 8, the three months runs from the date of exchange. (Added to Order VIII, r. 31, by County Court (No. 3) Rules, 1938.)

57 **Defences.** In any action founded on contract or tort or for recovery of any penalty, expenses, contribution, or other like demand where the plaintiff's claim exceeds £100, he may give notice of

objection to the action being tried in the county court, and where such notice is given the judge shall order the action to be transferred to the High Court. (Sect. 44 (1), added by Administration of Justice (Miscellaneous Provisions) Act, 1938.) The provisions as to transfer of actions of contract exceeding £20, or actions of tort exceeding £10, remain unaltered.

- 72 **Counterclaim exceeding Jurisdiction.** An application under sect. 63 must now be made within eight days of receipt of the counterclaim by the party against whom it is made, or if made by the party counterclaiming, within eight days of delivery of the counterclaim by him at the court office, and on the hearing the court may order the proceedings in the County Court to be stayed pending the disposal of the application. (Rules of Supreme Court (No. 2, 1938).)

- 77 **Evidence Act, 1938.** This Act came into operation on 1st September, 1938, and provides that where direct oral evidence of a fact would be admissible in any proceedings, any statement tending to establish the fact made in a document, including books, maps, plans, drawings and photographs, is to be admissible as evidence of that fact subject to the following conditions—

(a) the maker of the statement must have personal knowledge of the matters dealt with by the statement, or, if the document forms part of a continuous record (e.g. books of account) has made the statement, so far as the matters dealt with are not within his personal knowledge, in the performance of a duty to record information supplied by a person who

had, or might reasonably be supposed to have had, personal knowledge ;

(b) the maker of the statement must be called as a witness unless he is dead or unfit by reason of his mental or bodily condition or is beyond the seas, and it is not reasonably practicable to secure his attendance or all reasonable efforts to find him have failed. The court has a discretion, at any stage of the proceedings, to order, or at the hearing to allow, the statement to be admitted, if satisfied that unreasonable expense would otherwise be caused, although the maker is available but is not called as a witness, and though only a certified copy of the original statement can be produced. Where it is intended to take advantage of this provision, it seems desirable to apply for an order. Statements are deemed to be made by a person only if made, written or produced by him or signed, initialed or otherwise recognised by him as one for the accuracy of which he is responsible. Statements by an interested person made during or in anticipation of the proceedings are excluded. For the purpose of deciding whether these conditions are satisfied, the court may draw any inference from the form or contents of the document or other circumstances, and in jury cases may exclude the statement, though all the conditions are satisfied if exclusion is considered by the judge to be in the interests of justice.

Conditions as to the weight to be attached to such evidence are contained in sect. 2, while sect. 3 enables a document to be proved in the same

manner as it would be proved if an attesting witness were dead.

In the rule that documents produced from proper custody prove themselves, 20 years is substituted for the period of 30 years. The old authorities as to what is proper custody continue to apply.

Under sect. 5 rules may be made for the making of an order for the proof of facts by affidavit, with or without the attendance of the deponent for cross-examination, even though the other party desires his attendance.

This Act is of great importance and reference should be made thereto for its full contents.

- 101 **Libel and Slander — Payment into Court.** See *Millenstead v. Grosvenor House Ltd.* (Supplement, p. 179) decided on corresponding High Court Rule. (Order XXII, r. 6.)
- 111 **Interest.** Sect. 3 (1) of the Law Reform (Miscellaneous Provisions) Act, 1934, provides that “in any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment.” This power is not limited to cases arising after that Act came into operation. (*Bank of Athens Société Anonyme v. Royal Exchange Assurance*, [1938] 1 K.B. 771; [1938] W.N. 83; 158 L.T. 244.) A county court is a court of record,

and this case therefore gives the court a discretion to award interest in any proceedings, whenever begun, whether before or after the Act.

114 **Default Summons.** Order VIII, r. 5, see 53, 54.

120 **Default Summons.** Where the defendant in his admission makes a proposal for payment of the sum admitted and the registrar receives notice from the plaintiff accepting the proposal, the registrar must, if time permits, send notice of the acceptance to the defendant. (Order X, r. 6 (1).) (County Court (No. 1) Rules, 1938.)

Order X, r. 2 (2), revoked as from 1st September, 1938. (County Court (No. 2), Rules, 1938.) But see 21.

121 **Plaintiff's Non-appearance.** If the plaintiff does not appear, but the court has received from him an affidavit (admissible in evidence), the proceedings are not struck out, but the plaintiff is deemed to have appeared and tendered the evidence in the affidavit. (Order XXIII, r. 2 (3); County Court (No. 3) Rules, 1938.)

134 **Execution.** Where a praecipe for a warrant of execution against goods is filed by a solicitor in respect of a sum of money due under a judgment or order and exceeding £10, the solicitor is entitled to costs for attending to issue the execution. The scale is determined by the amount for which the warrant is issued, excluding the costs of issuing the execution, and may be fixed and allowed without taxation. The $33\frac{1}{3}$ per cent increase is chargeable where Scale B or C is applicable. (Order XXV r. 24 (1).) (County Court (No. 1) Rules, 1937.)

- 146 **Judgment Summons.** Order XXV, r. 36 revoked. (County Court (No. 1) Rules, 1938.) Where the warrant has been sent to a court other than the court in which the application for the judgment summons is made, the registrar of the court in which the application is made must notify the registrar of the court in which the warrant is outstanding that a judgment summons has been applied for. The registrar of the latter court must then send the warrant to the registrar from whom he receives the notification with a note of any fees or expenses incurred in the execution of the warrant. The judgment summons will not be issued until the execution creditor has paid any fees or expenses incurred in the execution of the warrant to the registrar of the court to which application for the summons is made. (Order XXV, r. 47. Amended by County Court (No. 1) Rules, 1938.)

If a judgment creditor desires to issue a judgment summons in a court other than the court in which the judgment or order was given or made, he may make an *ex parte* application in writing to the court in which the judgment or order was given or made for the transfer of the proceedings to a court having jurisdiction to issue the judgment summons and named in the application. The registrar will then make an order transferring the proceedings, make an entry of the transfer in the court books, and give notice of the transfer to the judgment debtor. He must also send a copy of the notice and a certificate of the judgment or order (Form 141) to the registrar of the court to which the proceedings have been transferred. When the proceedings have been transferred to

the other court, all payments must be made into, or process for enforcing the judgment or order issued out of, that court. If, after an order of transfer a payment is made into the court in which the judgment was obtained or order made, the registrar must give notice to the judgment creditor and send the payment to the registrar of the court to which the proceedings have been transferred. If the judgment creditor desires to issue a judgment summons in another court, he may make application to the court to which the proceedings have been transferred. (Order XXV, r. 48). (County Court (No. 1) Rules, 1938.)

- 150 Affidavit Evidence.** The evidence by affidavit is admissible without any notice. If the judgment creditor does not appear, but the court has received an affidavit (admissible in evidence under the Rule), he is deemed to have appeared and tendered the evidence in the affidavit. (Order XXV, r. 46, as amended by County Court (No. 3) Rules, 1938.)

- 160 Payment Out of Court.** Order XXVII, r. 8, revoked as from 1st September, 1938. Delete and substitute—

“Where money is paid into court by the garnishee and accepted by the judgment creditor, the registrar may on production of the consent in writing of the judgment debtor order the money to be paid out before the return day, or in the absence of the consent of the judgment debtor, the judge may on the return day, after hearing the judgment creditor and the judgment debtor, if he appears, make such order in the proceedings

(including an order as to costs) as may be just.”
(County Court (No. 2) Rules, 1938.)

- 166 Interlocutory Applications.** The jurisdiction of the court to hear and determine any application in the course of an action or matter before judgment may be exercised by the registrar, unless there is a provision to the contrary in any Act or Rule. (Added to Order XIII, r. 1, by County Court (No. 3) Rules, 1938.) The registrar can now therefore—in the absence of any provision in any Act or Rule—deal with any interlocutory applications.
- 180 Transfer.** The power of the High Court to transfer under sect. 54 is exercisable whether or not an application for transfer has been made. (Administration of Justice (Miscellaneous Provisions) Act, 1938, s. 17.)
- 183 Guardianship of Infants Act, 1925.** An application under section 9 of the Guardianship of Infants Act, 1925, for the consent of the court to the marriage of an infant may be heard and determined by the registrar. A copy of the application and a notice in Form 26 must, not less than seven clear days before the hearing, be served on every person whose consent is required and who has refused to consent. (Order XLVI, r. 8A.) (County Court (No. 1) Rules, 1938.)
- 183 Hire-purchase Act, 1938.** For the Rules regulating the procedure under this Act, see County Court Rules (No. 3), 1938.
- 187 Praecipe.** Delete words, “Questions 1, 2, and 3 must be answered,” and insert—“Question 1

must be answered, and if the answer is 'yes,' Questions 2 and 3 must be answered." (County Court (No. 3) Rules, 1938.)

- 190 **Praeipie.** Delete "Questions 1, 2, and 3 must be answered" and insert "Question 1 must be answered, and if the answer is 'yes,' Questions 2 and 3 must be answered." (County Court (No. 3) Rules, 1938.)
- 209 Add as fee No. 3A—
"3A. For service by bailiff of a default summons, 1s."
This fee is payable with the fee on entering the action.
(County Court Fees (Amendment No. 2) Order, 1938.)
- 212 Fee No. 22. Note for "paid" insert "deposited." (County Court Fees (Amendment) Order, 1938.)
- 216 Fee No. 47 (ii). For "7s." insert "7s. 6d." (County Court Fees (Amendment) Order, 1938.)
- 220 Fee No. 72. Insert as No. 72A "72A. On an application for the transfer of proceedings under Order 25, r. 48. 1s."
This fee includes the certificate of the judgment or order. (County Court Fees (Amendment) Order, 1938.)
- 222 Fee No. 88 (i). After the words "For an office copy," add "or a copy of a judge's notes." (County Court Fees (Amendment No. 2) Rules, 1938.)
- 223 Delete "Fee No. 89" and insert: "*Certificates and Certified Copies.* 89. For a certificate of a

judgment or order or a certified copy of entries in the books of the court. 1s." (County Court Fees (Amendment) Order, 1938.)

- 223 Delete "Fee No. 91" and insert: "91. For keeping an account of any money or fund to which r. 35 of the County Court Funds Rules, 1934, applies. For every £ . . . 3d."

This fee is payable out of the money or fund at the end of the prescribed period of five or fifteen years, whichever is applicable, and is to be calculated on the amount of the money or, in the case of stock, on the value of the stock. (County Court Fees (Amendment) Order, 1938.)

- 224 Fee No. 94 (iii) Add at end of note "*and transmitted by him to the Registrar of County Court Judgments.*" (County Court Fees (Amendment) Order, 1938.)

VOLUME VI
GUIDE TO DEATH DUTIES

VOLUME VI

GUIDE TO DEATH DUTIES

- 74 Valuation of Property.** As to the method of valuing shares in a company whose Articles of Association restrict the rights of transfer see *Commissioners of Inland Revenue v. Crossman and Others*, [1937] A.C. 26; [1936] 3 The Solicitor, p. 112.
- 79 Debts Deductible.** No allowance can be claimed for debts and funeral expenses which cannot be met out of the estate. (*Re Barnes deceased* (1938), 82 S.J. 648.)
- 319 Finance Act, 1930, sect. 40.** Objects of artistic interest. The duty chargeable under sect. 40 is upon the net proceeds of sale, that is, after deducting the expenses of sale. (*Tyser v. Attorney-General*, [1938] 1 Ch. 426; [1938] W.N. 110; 54 T.L.R. 481.)

VOLUME VII
FORMS

VOLUME VII

FORMS

9 **Conveyance by Tenant for Life. NOTICE BY TENANT FOR LIFE OF INTENTION TO SELL**

To of, and of Trustees for the purposes of the Settled Land Act, 1925, of a Settlement dated and made between [or of the Will dated of deceased].

I hereby, pursuant to Section 101 of the Settled Land Act, 1925, give you notice of my intention to sell under the powers of the Settled Land Act, 1925, the settled land or any part or parts thereof whenever necessary or expedient.

Dated this day of 19.....

(See Settled Land Act, 1925, sect. 101 (2) as to notice of a general intention to sell, exchange or lease.)

8 **Conveyances. CONVEYANCE TO SUB-PURCHASER**

THIS CONVEYANCE is made the day of 19.... BETWEEN *A B* of *etc.* (hereinafter called "the Vendor") of the first part *C D* of *etc.* of the second part and *E F* of, *etc.* (hereinafter called "the Purchaser") of the third part.

WHEREAS the Vendor is seised in fee simple in possession free from encumbrances of the property hereinafter described and has agreed to sell the same to the said *C D* at the price of £——and the said *C D* has agreed to sell the same property to the Purchaser at [the same price] or sum of £——.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— paid to the Vendor by the Purchaser at the request of the said *C D* (the receipt of which sum the Vendor hereby acknowledges) [or in consideration of the sum of £—— to the Vendor and the sum of £—— to the said *C D* £ : : paid by the purchaser] (the receipt of which sum the Vendor and the said *C D* hereby respectively acknowledge) the Vendor as beneficial owner at the request of the said *C D* and the said *C D* as beneficial owner hereby conveys and confirms unto the Purchaser.

ALL THAT, ETC.

To HOLD the same unto the Purchaser in fee simple.

[Add acknowledgment for production of deeds and certificate of value, if applicable.]

IN WITNESS, etc.

The stamp will be ad valorem on the amount paid by the sub-purchaser. (See Stamp Act, 1891, sect. 58 (4).)

REGISTERED LAND

District

Title No.

Property

(Date) In consideration of £—— paid to *A B* of etc. (hereinafter called "the Vendor") by *E F* of etc. (hereinafter called "the Purchaser") at the request of *C D* of etc. [or In consideration of £—— paid to *A B* of etc. (hereinafter called "the Vendor") by *E F* of etc. (hereinafter called "the Purchaser")]

and of £—— paid to *C D* of *etc.*, by the Purchaser the receipt of which sums the Vendor and the said *C D* hereby acknowledge] the Vendor as beneficial owner by the direction of the said *C D* directing as beneficial owner hereby transfers to the Purchaser the land comprised in the title above referred to.

[Add Certificate as to value, if applicable.]

Signed, sealed and delivered, etc.

As to stamp, see note on previous Precedent.

CONVEYANCE BY MORTGAGOR

(FIRST AND SECOND MORTGAGEES CONCURRING)

THIS CONVEYANCE is made the day of 19....., BETWEEN *A B* of *etc.* (hereinafter called the "first Mortgagee") of the first part *C D* of *etc.* (hereinafter called "the second Mortgagee") of the second part, *E F* of *etc.* (hereinafter called "the Vendor") of the third part and *X Y* of *etc.* (hereinafter called "the Purchaser") of the fourth part.

WHEREAS by a Legal Charge (hereinafter called "the First Mortgage") dated, *etc.*, and made between, *etc.*, the Vendor charged by way of legal mortgage the premises hereinafter described with the payment to the first mortgagee of the principal sum of £—— and interest as therein mentioned.

AND WHEREAS by a Legal Charge (hereinafter called "the Second Mortgage") dated, *etc.*, and made between, *etc.*, the Vendor charged by way of legal mortgage (subject to the First Mortgage) the premises hereinafter described with the payment

to the Second Mortgagee of the principal sum of £—— and interest as therein mentioned.

AND WHEREAS the Vendor has agreed with the Purchaser for the sale to him of the premises hereinafter described and the fee simple thereof in possession free from encumbrances at the price of £——.

AND WHEREAS the said principal sums of £—— and £—— still remain owing to the First and Second Mortgagees respectively upon the security of the First and Second Mortgages all interest thereon having been paid up to the date of these presents as they hereby respectively acknowledge and they have agreed to join in these presents in manner hereinafter appearing.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid to the First Mortgagee and of the sum of £—— now paid to the Second Mortgagee by the Purchaser by the direction of the Vendor (the receipt whereof the First and Second Mortgagees hereby respectively acknowledge) and of the sum of £—— now paid to the Vendor by the Purchaser (the receipt of which sum of £—— and the payment of the said sums of £—— and £—— the Vendor hereby acknowledges) the First Mortgagee by the direction of the Vendor as Mortgagee and the Second Mortgagee by the direction of the Vendor as Mortgagee hereby release and the Vendor as beneficial owner hereby conveys and confirms unto the Purchaser.

ALL THAT, etc.

To HOLD the same unto the Purchaser in fee simple discharged from all principal money and

interest secured by and from all claims under the First and Second Mortgages or either of them.

[Add acknowledgment for production of deeds and certificate of value, if applicable.]

IN WITNESS, etc.

CONVEYANCE BY FORMER TENANTS IN COMMON

THIS CONVEYANCE is made the day of
19 , BETWEEN *A B* of *etc.*, and *C D*
of *etc.* (hereinafter called "the Vendors") of the
one part and *E F* of, *etc.* (hereinafter called "the
Purchaser") of the other part.

WHEREAS under the Will dated the day
of 19 and proved in the
Registry on the day of 19 and
in the events which had then happened the
property hereinafter described was immediately
before the coming into force of the Law of Prop-
erty Act, 1925, vested in the Vendors in fee simple
as tenants in common in equal shares free from
encumbrances affecting their undivided shares.

AND WHEREAS by virtue of the said Act the
said property became and is now vested in the
Vendors as joint tenants upon the statutory
trusts.

AND WHEREAS the Vendors have agreed with
the Purchaser for the sale to him of the said
property at the price of £——.

NOW THIS DEED WITNESSETH that in pur-
suance of the said agreement and in consideration
of the sum of £—— paid by the Purchaser to the
Vendors (the receipt of which sum the Vendors

hereby acknowledge) the Vendors as beneficial owners hereby convey unto the Purchaser.

ALL THAT, etc.

To HOLD the same unto the purchaser in fee simple.

[*Add acknowledgment for production of deeds, and certificate as to value, if applicable.*]

IN WITNESS, etc.

ASSIGNMENT OF A JUDGMENT DEBT

THIS ASSIGNMENT is made the day of
19 , BETWEEN *A B* of, etc. (hereinafter called "the Vendor") of the one part and *C D* of, etc. (hereinafter called "the Purchaser") of the other part.

WHEREAS the Vendor on the day of
19 , obtained a judgment in the King's Bench Division of the High Court of Justice against *X Y* of, etc., in an action having the short title of for the sum of £—— and costs.

AND WHEREAS the sum of £—— is now owing to the Vendor for principal interest and costs under the said judgment and he has agreed to sell the said judgment debt to the Purchaser at the price of £——.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor as beneficial owner hereby assigns unto the Purchaser.

ALL THAT the sum of £—— now owing on the said judgment as hereinbefore mentioned and

all interest hereafter to become due thereon and the full benefit of the said judgment and of all other securities for the said debt.

To HOLD the same unto the Purchaser absolutely.

THE Vendor hereby covenants with the Purchaser that the whole of the said sum of £—— remains owing on the said judgment.

[Add certificate as to value, if applicable.]

IN WITNESS, etc.

(The stamp will be ad valorem on the amount of the consideration. Notice of the assignment must be given to the judgment debtor.)

ACKNOWLEDGMENT FOR PRODUCTION OF DEEDS BY SEPARATE DOCUMENT

(BENEFICIAL OWNER)

To A B of etc. (Purchaser).

I C D of, etc. (Vendor) hereby acknowledge your right to production and delivery of copies of the deeds and documents mentioned in the Schedule hereto which documents relate (amongst other property) to a plot of land situated at
in the County of conveyed to you
by a Conveyance dated the day of
19 , and made between, etc. AND I hereby undertake for the safe custody of the said documents.

As WITNESS my hand this day of
19 .

THE SCHEDULE

(Particulars of deeds and documents.)

ASSENT BY PERSONAL REPRESENTATIVES

IN FAVOUR OF PERSON ABSOLUTELY ENTITLED

By this Assent made the day of
19 , WE *A B* of, *etc.*, and *C D* of, *etc.*, the
Executors (*or* Administrators) of *X Y* late of,
etc., who died on the day of 19 ,
and whose Will dated the day of
19 , was proved by us on the day of
19 , in the Probate Registry
(*or* intestate and to whose estate Letters of
Administration were on the day of
granted to us out of the Registry) do as
Personal Representatives Assent to the vesting in
F G of, *etc.*, of ALL THAT, *etc.*, for all the estate or
interest of the said *X Y* at the time of his death
(*or* for an estate in fee simple *or* for the residue of
the term of years granted by a Lease
dated, *etc.*, and made between, *etc.*, under which
the same is held). AND we hereby acknowledge
the right of the said *F G* to production of the said
Probate of the said Will (*or* Letters of Adminis-
tration) and to delivery of copies thereof.

AS WITNESS, *etc.*

*(A memorandum of the assent should be endorsed
on the grant.)*

POWER OF ATTORNEY TO RECEIVE LEGACY

THIS POWER OF ATTORNEY made the day
of 19 , by me of *A B* of, *etc.*

WHEREAS *X Y* late of *etc.*, by his Will dated the
day of 19 , appointed and
to be the executors and trustees thereof and

thereby bequeathed to me a legacy of £—— (free of duty).

AND WHEREAS the said *X Y* died on the day of 19 , and his said Will was duly proved on the day of 19 , by the said and in Probate Registry.

NOW THIS DEED WITNESSETH that I the said *A B* hereby appoint *C D* of *etc.*, my attorney for me and on my behalf to execute and do all or any of the acts and things following that is to say—

1. To demand require payment of and recover from the said and or other the personal representatives for the time being of the said *X Y* deceased the said Legacy of £—— and any interest which may be due or payable in respect of the same.

2. Upon payment of the said Legacy together with any interest payable in respect thereof to give a good receipt or discharge for the same in my name and on my behalf if my said attorney shall think fit to enter into and execute any covenant or bond for the repayment of the said legacy and interest or a due proportion thereof respectively in the event of the estate and effects of the said *X Y* proving insufficient for payment of his debts and the legacies bequeathed by his said Will,

3. Upon failure to pay the said legacy and any interest payable in respect thereof to institute and prosecute in his or my name any legal or other proceedings for obtaining payment of the same which to my said attorney may seem proper or expedient.

4. To settle all accounts relating to the said

Legacy or any interest payable in respect thereof and to compromise or refer to arbitration any dispute concerning the same.

AND I hereby agree and undertake to ratify and confirm all and whatsoever that my attorney shall lawfully do or cause to be done by virtue of this Deed. AND I declare that this Power of ATTORNEY shall be irrevocable for months from the date hereof.

IN WITNESS, etc.

POWER OF ATTORNEY TO OBTAIN ADMINISTRATION

ON BEHALF OF PERSON RESIDING ABROAD

THIS POWER OF ATTORNEY is made the
day of 19 , by me *A B* at present
residing at .

WHEREAS *X Y* (*intestate*) late of, *etc.*, died on the day of 19 , *intestate* (a bachelor without a parent leaving me one of his brothers him surviving and one of the persons entitled to share in his estate).

NOW THIS DEED WITNESSETH that I the said *A B* hereby nominate constitute and appoint *C D* of, *etc.*, to be my attorney for the purpose of obtaining letters of administration to the estate of the said *X Y* deceased to be granted to him by the High Court of Justice for my use and benefit and until I shall duly apply for and obtain letters of administration to the said estate to be granted to me. AND I hereby agree and undertake to ratify and confirm all and whatsoever that my said Attorney shall lawfully do or cause to be done by virtue of this Deed.

IN WITNESS, etc.

POWER OF ATTORNEY BY TRUSTEE

ABOUT TO GO ABROAD DELEGATING HIS

POWERS AS TRUSTEE

THIS POWER OF ATTORNEY is made the day of 19 , by me *A B* of, *etc.*

WHEREAS I am one of the Trustees of, *etc.*

AND WHEREAS I am about to depart and remain out of the United Kingdom for a period exceeding one month.

NOW THIS DEED WITNESSETH that I the said *A B* hereby appoint *C D* of, *etc.*, to be my attorney in my name and on my behalf to execute and exercise during my absence from the United Kingdom all or any of the trusts powers and discretions vested in me as such trustee as aforesaid either alone or jointly with any other person or persons. AND I hereby agree to ratify and confirm all and whatsoever that my attorney shall lawfully do or cause to be done by virtue of this Deed.

IN WITNESS, *etc.*

DECLARATION OF TRUST

THIS DECLARATION OF TRUST made this day of 19 . BETWEEN *A B* of, *etc.* (hereinafter called "the Trustee") of the one part and the said *A B, C D* of, *etc.* (hereinafter called "the Beneficiaries") of the other part.

WHEREAS the Beneficiaries are entitled in equity as tenants in common of ALL THAT, *etc.*

AND WHEREAS it has been agreed that the Trustee shall hold the said land in trust for the Beneficiaries in manner hereinafter expressed.

NOW THIS DECLARATION WITNESSETH that in pursuance of the said agreement and in consideration of the premises the Trustee shall henceforth stand possessed of the said land and premises upon trust to sell the same at the direction of the Beneficiaries or the survivor or survivors of them and the executors or administrators of any of them with power at the like direction to mortgage all or any part of the said land and premises and shall out of the moneys arising from any such sale pay the costs or otherwise in respect of the said land and premises and shall hold the residue of such sale moneys and the rents and profits of the said land and premises or the unsold parts thereof until sale UPON TRUST for the Beneficiaries as tenants in common. (*For leaseholds add*)

THE Beneficiaries and each of them as a separate covenant hereby covenant with the Trustee that they the Beneficiaries will at all times hereafter keep the Trustee indemnified against the payment of the rent reserved by and the performance and observance of the covenants and agreements on the part of the lessee contained in the said lease and from all actions costs expenses claims and demands in respect thereof.

IN WITNESS, etc.

ASSIGNMENT OF LEASEHOLDS

TENANT FOR LIFE ACTING BY RECEIVER
IN LUNACY

THIS ASSIGNMENT is made the day of
19 . BETWEEN A B of, etc.

(hereinafter called "the Vendor") acting by *C D* of, *etc.*, pursuant to the hereinafter recited Order (hereinafter called "the Receiver") of the first part. *E F* of, *etc.*, and *G H* of, *etc.* (hereinafter called "the Trustees" of the second part and *X Y* of, *etc.* (hereinafter called "the Purchaser") of the third part.

WHEREAS—

1. (*Recite the Lease.*)

2. BY virtue of divers mesne assurances acts in the law and events and ultimately by a Vesting Assent dated the day of 19 , and made between the Trustees of the one part and the Vendor (acting by the Receiver of the other part) the Trustees declared that all and singular the leasehold property comprised in and demised by the hereinbefore recited lease was vested in the Vendor for all the residue of the term of years for which the same was held subject to the limitations of a Settlement dated the day of 19 and made between and the Vendor (then Spinster) of the one part and the Trustees of the other part.

3. BY a Contract dated the day of 19 the Receiver acting on behalf of the Vendor agreed subject to the approval as therein mentioned to sell and transfer to the Purchaser the leasehold property comprised in and demised by the hereinbefore recited lease for the residue of the term thereby granted for the sum of £ .

4. BY an Order dated the day of 19 and made under the Act 53 Vict., c. 5, and amending Acts in the matter of the Vendor the

Receiver was authorised and directed subject to the approval of the Master in the name and on behalf of the Vendor as tenant for life under the Settled Land Act, 1925, to sell the said leasehold premises and for that purpose to execute and do such instruments acts and things as the Master shall settle and approve.

5. THE Master has settled and approved this deed as appears by his seal impressed in the margin hereof.

NOW THIS DEED WITNESSETH that in pursuance of the said recited agreement and in consideration of the sum of £ now paid by the Purchaser by the direction of the Vendor acting by the Receiver to the Trustees as such Trustees as aforesaid (the receipt whereof the Trustees hereby acknowledge and the payment whereof in manner aforesaid the Vendor acting by the Receiver as aforesaid hereby acknowledges) the Vendor as trustee by virtue of the powers vested in her by the Settled Land Act, 1925, and of every or any other power enabling her in this behalf acting by the Receiver as aforesaid hereby assigns unto the Purchaser ALL THAT the land and premises comprised in and demised by the hereinbefore recited lease TO HOLD the same unto the Purchaser henceforth for all the residue now unexpired of the said term of years granted by the hereinbefore recited lease subject henceforth to the payment of the rent reserved by and the performance and observance of the covenants on the part of the lessee and conditions by and in the same lease contained.

THE Trustees hereby acknowledge the right of the Purchaser to the production and delivery of

“the Policy moneys”) upon the trusts hereinafter expressed concerning the same respectively.

3. WHEN and as the Bank shall receive the said Policy moneys to pay thereout all fees costs charges and expenses incurred by or payable to the Bank in connection with the collection and distribution of the Policy moneys and to pay the balance thereof to the Settlor's wife for her sole use and benefit should she be then living.

4. IN the event of the Settlor's said wife dying before the Policy moneys become payable the Bank shall pay the said balance thereof unto and equally between the Settlor's two children and or to such one of them as shall be living at the time the Policy moneys become payable.

5. THE Bank may at any time with the consent of the Settlor's said wife surrender the said Policies and any moneys received by the Bank by virtue of such surrender shall after payment of all fees costs charges and expenses as aforesaid be paid to the Settlor's said wife if then living or if she be then dead to his said children as hereinbefore provided by clause 4 hereof in regard to the balance of the Policy moneys.

6. THE Bank so long as it shall be trustee hereof shall be entitled to act as Bankers for all purposes of this Settlement upon the usual terms as between the Bank and a customer and shall also be entitled to remuneration for its services as trustee hereof in accordance with its scale of fees now in force.

IN WITNESS, etc.

THE SCHEDULE.
(Particulars of Policies.)

HIGH COURT FORMS

127 Specially Endorsed Writs. AGENT: MONEY PAID
TO FOR SPECIFIC PURPOSE

The plaintiff's claim is for the return of moneys paid to the defendant on the day of 19 , as agent for the plaintiff and accepted by the defendant for the specific purpose of discharging certain accounts due from the plaintiff to certain tradesmen which the defendant has failed to do and has also failed after demand made to return the said money to the plaintiff.

PARTICULARS

19. .
[June] Amount paid by plaintiff to defendant for the above mentioned purpose and improperly retained by defendant £

(Signed.)

ASSIGNEE OF BOOK DEBTS: PURCHASED FROM
TRUSTEE IN BANKRUPTCY

The plaintiff's claim is against the defendant by virtue of a Deed of Assignment dated 19 , under which the plaintiff became the assignee from *A B* of the book debts of *X Y* late of who was on the 19 , adjudicated bankrupt in the High Court of Justice, King's Bench Division [or, in the County Court] and of whose estate the said *A B* was duly appointed trustee on the 19 , [for the price of goods sold by the said *X Y* to the defendant]. Notice in writing of the said assignment was given to the defendant on 19

PARTICULARS

[as for Goods sold and delivered]

(Signed.)

COMPANY AGAINST SHAREHOLDER
FOR CALLS

The plaintiffs' claim is for money in which the defendant as a member of the company is indebted to the plaintiffs (being a Company incorporated under the Companies Act, 1929) for a call of £—— each upon —— shares of the Company of which defendant is the holder payable on the 19 , of which due notice was given to the defendant on the 19 , whereby an action has accrued to the plaintiffs.

PARTICULARS

19..				
[June]	Call of £	per share .	£	_____
	Amount due	.	£	=====

(Signed.)

SURETY FOR CONTRIBUTION

The plaintiff's claim against the defendant is for contribution for the payment of the balance of a mortgage debt due from *A B* to *C D* in respect of which the plaintiff and defendant were co-sureties.

PARTICULARS

19..				
[June]	To amount paid by plaintiff to			
	<i>C D</i> deficiency on realisation of			
	mortgage security	£		
	Less Plaintiff's liability for			
	[one-fourth] thereof	£		
			£	=====

(Signed.)

STOCKBROKER: FOR PURCHASE MONEY OF SHARES AND COMMISSION

The plaintiff's claim against the defendant is for
£ moneys paid by him as a stock and share
broker in the purchase of shares in the
 Company Limited in the name of and
transferred to the defendant at his request, and
for commission on such purchase.

PARTICULARS

19..				
[June]	Amount paid in purchase of the			
	said shares	.	.	£
	Commission at		per share	£
	Stamp on Transfer	.	.	£
				<hr/>
				£
				<hr/>

(Signed.)

BILLS OF EXCHANGE

PAYEE AGAINST ACCEPTOR

The plaintiff's claim is as payee against the
defendant as acceptor of a bill of exchange drawn
by the Bank Limited for £ dated
 19 , payable three months after date,
which on presentation was dishonoured.

PARTICULARS

19..				
	Principal	.	.	£
	Interest	.	.	£
				<hr/>
	Amount due	.	.	£
				<hr/>

(Signed.)

ENDORSEE AGAINST ACCEPTOR

The plaintiff's claim is against the defendant as the acceptor of a bill of exchange for £ dated 19 , drawn upon and payable to *A B* three months after date which was endorsed by *A B* to the plaintiff, which on presentation was dishonoured.

PARTICULARS

19..	Principal	.	.	.	£
	Interest	.	.	.	£
	Amount due	.	.	.	£

(Signed.)

EXECUTOR OR ADMINISTRATOR OF PAYEE
AGAINST ACCEPTOR

The plaintiff's claim is as executor of the last Will of *C D* deceased [or as administrator of the personal estate and effects of *C D* deceased] against the defendant as acceptor of a bill of exchange for £ dated 19 , drawn by *A B* payable three months after date to the said *C D* who died before (or after) maturity of the said bill, namely on 19 .

PARTICULARS

19..	Principal	.	.	.	£
	Interest	.	.	.	£
	Amount due	.	.	.	£

(Signed.)

PROMISSORY NOTES

PAYEE AGAINST MAKER

The plaintiff's claim is against the defendant as maker of a promissory note for £ dated .

19 , payable [four] months after date [to the plaintiff or his order].

PARTICULARS

19..	Principal	.	.	.	.	£
	Interest	.	.	.	.	£
	Amount due	.	.	.	.	£

(Signed.)

PAYEE AGAINST MAKER

(PAYABLE ON DEMAND)

The plaintiff's claim is against the defendant as maker of a promissory note for £ dated 19 , payable to the plaintiff on demand.

PARTICULARS

19..	Principal	.	.	.	.	£
	Interest	.	.	.	.	£
	Amount due	.	.	.	.	£

(Signed.)

CHEQUES

HOLDER AGAINST DRAWER

The plaintiff's claim is against the defendant as drawer of a cheque for £ on the Branch of the Bank Limited dated 19 , payable to (or order or bearer) of which cheque plaintiff is the holder for value and which cheque has been duly presented for payment and dishonoured and notice of which dishonour was sent to the defendant on 19

PARTICULARS

19..	Principal	.	.	.	£
	Interest	.	.	.	£
	Bank charges	.	.	.	£
					<u> </u>
	Amount due	.	.	.	£ <u> </u>

(Signed.)

ENDORSEE AGAINST ENDORSER

The plaintiff's claim is as holder against the defendant as endorser of a cheque for £ drawn by *A B* in favour of the defendant on the _____ Branch of the _____ Bank Limited dated _____ 19____, which cheque was duly presented for payment and was dishonoured, notice of which was given to the defendant on _____ 19____.

PARTICULARS

19..	Principal	.	.	.	£
	Interest	.	.	.	£
	Bank charges	.	.	.	£
					<u> </u>
	Amount due	.	.	.	£ <u> </u>

(Signed.)

VOLUME VIII
HIGH COURT PRACTICE

VOLUME VIII
HIGH COURT PRACTICE

- 1 **Chancery Division.** Actions in which there is a claim for principal money or interest secured by any mortgage or a claim for possession of any mortgaged property have been assigned to the Chancery Division.
- 7 **Service.** The order giving leave to effect service out of the jurisdiction must limit the time within which the defendant is to enter appearance, such time to depend on the place or country where the writ is to be served and whether the Air Mail is available to the defendant and the court may also direct that the Air Mail shall be used by the party effecting service. (Order XI as amended by Rules of the Supreme Court (No. 3), 1937.)
- 15 **Originating Summons Not Requiring Appearance.** See Order LIII B, etc.
- 22 **Service.** Line 10 for "on" read "no."

Service Out of Jurisdiction. Where, by virtue of sect. 176 of the Government of India Act, 1935, or sect. 132 of the Government of Burma Act, 1935, the Federation of India or the Federal Railway Authority of India or a Province or the Government of Burma or the Burma Railway Board is sued it is not necessary to apply for leave to serve out of the jurisdiction. Service may be effected on the High Commissioner for

India in London. (Order IX, Rule 14 A.) (Rules of Supreme Court (No. 3), 1937.)

- 37 **Bills of Sale.** Applications to extend the time for re-registration of an absolute bill of sale are now made to a master. (Rules of Supreme Court (No. 3), 1937.)
- 39 **Sittings and Vacations.** The summons and order department, the crown office, and associates' departments now close at one o'clock on Saturdays. (Rules of Supreme Court (No. 2), 1936.)

The Sittings for 1939 are—

Hilary	. 11th January–5th April
Easter	. 18th April–26th May
Trinity	. 6th June–31st August
Michaelmas	12th October–21st December

- 43 **Time.** A specially endorsed writ may be amended once during the long vacation without leave.
- 46 **Infants.** The next friend of an infant may be held to be personally liable for damages and costs, but a guardian *ad litem* is only liable if he has been guilty of gross misconduct.
- If a settlement of an action by an infant plaintiff is arranged, the settlement must be approved by the court. Once an appeal is entered, the Court of Appeal has seisin of the matter and the application must be made to that court. (*Walsh v. George Kemp Ltd.*, [1938] W.N. 120.)
- 48 **Married Women.** Since publication of the original Volume important changes of the law affecting

court or judge. (Rules of Supreme Court (No. 2), 1936.)

Order LXIV, Rule 8, does not apply to New Procedure cases now abolished. (See Original Volume, p. 282.)

Defence. Consent to extension of time must be in writing, unless made by the court. (Rules of Supreme Court (No. 2), 1936.)

51 **Prints.** After 13th April, 1936, the statutory increase has been restored to $33\frac{1}{3}\%$.

54 **Notice to Admit.** Not later than nine days before the day for which notice of trial has been given. Admissions within six days after service of the notice to admit. (Rules of Supreme Court (No. 3), 1937.)

54 **Summons for Directions.** By reason of the alterations brought into operation by the Rules of the Supreme Court (No. 3), 1937, and the Rules of the Supreme Court (No. 2), 1938, the summons for directions is now a very important step in an action and the Master may now, upon the hearing of the summons or at any later time before judgment, give any such directions as to the proceedings to be taken in the action and as to the costs thereof and without prejudice to the generality of these powers may—

(a) make an order as to discovery and inspection of documents, interrogatories, inspection of real or personal property, and admissions of facts or of documents;

(b) order the place and mode of trial;

(c) order that any particular fact or facts be proved by affidavit, or that the affidavit of any person be read at the trial or that any witness whose attendance in court for some sufficient reason ought to be dispensed with, be examined before a Commissioner or Examiner;

(d) order that evidence of any particular fact or facts specified in the order be given at the trial by statement on oath or information and belief, or by production of documents or entries in books, or by copies of documents or entries or otherwise;

(e) limit the number of expert witnesses;

(f) appoint a court expert (under order XXXVII A);

(g) record any consent of the parties either wholly excluding their right of appeal or limiting it to the court of appeal or to questions of law only;

(h) make any other order as to pleadings and particulars.

(j) in cases where two or more tortfeasors are sued together in respect of the same tort or damage and any one of them in the same proceedings claims contribution from the other or others, order that a written offer of contribution made by any one of such joint tortfeasors to the other or others of them shall be treated for the purposes of such claim as a notice of payment into court.

Where in the opinion of the court any party reasonably requires a witness to attend for cross-examination and such witness can be produced, an order authorising that the evidence of such witness be given by affidavit will not be made

and the expenses of such witness at the trial will be reserved.

In a King's Bench action where trial is ordered in London, the order made on the summons—

(a) shall contain an estimate of the length of the trial;

(b) direct the cause to be set down for trial within a specified time; or

(c) if it appears that the action ought to have a speedy trial, direct that application be made to the judge to fix a date for the trial.

Direction may also be given that the action be set down in the Short Cause List. (Rules of Supreme Court (No. 3), 1937.)

54 Notices to Admit.

Notice to Admit Facts. The notices must be given not later than nine days after notice of trial has been given, or, if no notice of trial is required, not later than nine days after the action has been set down for trial.

61 Notice of Trial.

If on the hearing of the summons for directions (King's Bench action) an order is made directing the action to be set down for trial, a notice of trial is not now necessary. If the plaintiff does not set down for trial within the specified time, the defendant may either himself set down or apply to have the action dismissed for want of prosecution. (Rules of Supreme Court (No. 3), 1937.)

The lists are now four; Special Jury List. Common Jury List. Long Non-jury List. Short Non-jury List.

The lists are under the supervision of the Lord Chief Justice and on setting down a date is fixed *before which the action cannot be tried*, but application may be made for the date to be altered. If the case is already in the week's list an application for postponement can only be made to the judge in charge of the list. (Rules of Supreme Court (No. 3), 1937.)

Where an action is transferred from a non-jury list to a jury list, all appropriate variations of the order for directions must be given at the same time. (Rules of Supreme Court (No. 2), 1938.)

- 79 **Judgment Summons.** A judgment summons on a High Court judgment may be issued in the County Court, and is a somewhat cheaper procedure.

Parties. Married Women. See Supplement, p. 162.

- 88 **Office Copies.** A written or typewritten copy of a document to be filed, registered or marked as an office copy must be a first black ink copy. (Rules of Supreme Court (No. 3), 1937.)

- 92 **County Courts Act, 1919, sect. 2, now County Courts Act, 1934, sect. 46.**

- 95 **Representation Order.** The defendants must all stand in the same relation to the plaintiff. (*Barker v. Allanson*, [1937] 1 K.B. 463.)

- 101 **Representative.** The person appointed must be willing to act. (*Pratt v. London Transport Board*, 156 L.T. 265; [1937] W.N. 43.)

- 109 **Third Party Proceedings.** Where a third party makes a claim against any person who is not already a

party to the action he may similarly commence proceedings against the additional (fourth) party, who in turn may commence proceedings against a fifth party and so on (Order XVI, Rule 11). Cases have been known of parties being joined up to the eighth and ninth party.

114 New Procedure. Abolished, see 280.

117 Charging Orders. Applications for charging orders over partnership property are now made to and determined by the Master. (Rules of Supreme Court (No. 3), 1937.)

128 Removal of Solicitor. Line 26 before "letter" insert "prepaid post" letter.

The party obtaining the order must now serve on every other party (not being a party in default as to entry of appearance) a copy of the order and enter the order in the appropriate office (see Original Volume, p. 6) with a certificate of service signed by the applicant or his solicitor. (Rules of Supreme Court (No. 3), 1937.) Service of the order takes the place of service of "notice of removal."

129 Solicitors. Every judgment or order requiring any person to do an act must state the time, or the time after service of the judgment or order, within which the act is to be done. The notice is in the following form "If you, the within-named *A B* neglect to obey this judgment (or order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment (or order)" and must be endorsed upon the copy of the judgment or order

served (Order XLI, Rule 5). The Rule only applies to a judgment or order to do an act. A writ of attachment for disobedience of such an order will not be directed unless a copy of the order, endorsed with the penal notice, has been served, or unless the person concerned has had notice of the order and is evading service. The fact that the person was present in court when the order was made is not sufficient to dispense with service.

Withdrawal of Solicitor. In this case also the letter must also be sent by prepaid post letter and the order served and entered with a certificate of service as in the case of an order of removal. Unless and until the order has been so served and entered, the solicitor is deemed to be the solicitor of the party to the final conclusion of the action. From and after the time when the order has been entered any document not requiring personal service may be filed in default unless the party either appoints another solicitor and gives notice thereof or gives notice of his intention to act in person. (Rules of Supreme Court (No. 3), 1937.)

130 Delivery and Taxation of Costs. Further as to delivery and taxation, see Volume 4 (Costs).

140 Chancery Division. Consequent upon the reduction of the number of the Judges in the Chancery Division from six to five, the following alterations have been made in the work of the division. The alterations took effect as from 11th January, 1939.

The Judges are divided into two groups of two each—

Group A.—BENNETT, J., SIMONDS, J.

Group B.—CROSSMAN, J., MORTON, J.

In each term one Judge from each group will take witness actions and one Judge from each group non-witness list. The distinction between long and short witness actions is no longer maintained. The Senior Judge is attached to neither group, but will from time to time take witness and non-witness work as occasion requires.

As from 11th January, 1939, the division of work among the Masters (Holland, Holloway, Willmott, Jelf (H.W.), Trehearne, Newman, Hawkins, and Mosse) is as follows—

The Chief Master (Master Holland, Room 173) will deal with the following—

(A) All applications made under the Adoption of Children Act, 1926.

(B) All applications as to removals and appeals from the County Court under sect. 10 of the Guardianship of Infants Act, 1886.

(C) Applications for transfers of causes or matters from one Judge of the Chancery Division to another under Order XLIX, r. 1A.

GROUP A

Chambers of MR. JUSTICE BENNETT and
MR. JUSTICE SIMONDS.

Master HOLLOWAY (Room 154).

A-D (1) All matters assigned to either of the above Judges or their successors on or after the 1st January, 1939.

(2) All matters assigned to Mr. Justice Bennett, Mr. Justice Crossman, or Mr. Justice Simonds or their predecessors from 1st January, 1928, to 31st December, 1938.

A-F. All matters assigned to Mr. Justice Eve, and Mr. Justice Romer or their predecessors prior to 1st January, 1928.

Master WILLMOTT (Room 237).

E-K (1) All matters assigned to either of the above judges or their successors on or after the 1st January, 1939.

(2) All matters assigned to Mr. Justice Bennett, Mr. Justice Crossman, or Mr. Justice Simonds or their predecessors from 1st January, 1928, to 31st December, 1938.

G-N. All matters assigned to Mr. Justice Eve, or Mr. Justice Romer or their predecessors prior to 1st January, 1928.

G-K. All matters assigned to Mr. Justice Russell or his predecessors prior to 1st January, 1928.

Master H. W. JELF (Room 157).

L-R. (1) All matters assigned to either of the above Judges or their successors on or after the 1st January, 1939.

(2) All matters assigned to Mr. Justice Bennett, Mr. Justice Crossman, or Mr. Justice Simonds or their predecessors, from 1st January, 1928, to 31st December, 1938.

O-Z. All matters assigned to Mr. Justice Russell or Mr. Justice Tomlin or their predecessors prior to 1st January, 1928.

L-N. All matters assigned to Mr. Justice Russell or his predecessors prior to 1st January, 1928.

Master TREHEARNE (Room 246).

S-Z. (1) All matters assigned to either of the above Judges or their successors on or after 1st January, 1939.

(2) All matters assigned to Mr. Justice Bennett, Mr. Justice Crossman, or Mr. Justice Simonds or their predecessors from 1st January, 1928, to 31st December, 1938.

O-Z. All matters assigned to Mr. Justice Eve and Mr. Justice Romer or their predecessors prior to 1st January, 1928.

GROUP B

Chambers of Mr. JUSTICE CROSSMAN and
Mr. JUSTICE MORTON.

Master NEWMAN (Room 162).

A-D. (1) All matters assigned to either of the above Judges or their successors on or after 1st January, 1939.

(2) All matters assigned to Mr. Justice Luxmoore, Mr. Justice Farwell, or Mr. Justice Morton or their predecessors, from 1st January, 1928, to 31st December, 1938.

A-F. All matters assigned to Mr. Justice Astbury or Mr. Justice Clauson or their predecessors prior to 1st January, 1928.

Master HOLLAND (Room 173).

E-K. (1) All matters assigned to either of the above Judges or their successors on or after 1st January, 1939.

(2) All matters assigned to Mr. Justice Luxmoore, Mr. Justice Farwell, or Mr. Justice Morton or their predecessors from 1st January, 1928, to 31st December, 1938.

G-N. All matters assigned to Mr. Justice Astbury and Mr. Justice Clauson or their predecessors prior to 1st January, 1928.

G-K. All matters assigned to Mr. Justice Tomlin or his predecessors prior to 1st January, 1928.

Master HAWKINS (Room 168).

L-R. (1) All matters assigned to either of the above Judges or their successors on or after 1st January, 1939.

(2) All matters assigned to Mr. Justice Luxmoore, Mr. Justice Farwell, or Mr. Justice Morton or their predecessors from 1st January, 1928, to 31st December, 1938.

A-F. All matters assigned to Mr. Justice Russell or Mr. Justice Tomlin or their predecessors prior to 1st January, 1928.

L-N. All matters assigned to Mr. Justice Tomlin or his predecessors prior to 1st January, 1928.

Master MOSSE (Room 163).

S-Z. (1) All matters assigned to either of the above Judges or their successors on or after 1st January, 1939.

(2) All matters assigned to Mr. Justice Luxmoore, Mr. Justice Farwell, or Mr. Justice Morton or their predecessors from 1st January, 1928, to 31st December, 1938.

O-Z. All matters assigned to Mr. Justice Astbury or Mr. Justice Clauson, or their predecessors, prior to 1st January, 1928.

162 Patent Actions. Where on a petition for revocation of a patent under sect. 25, or on a counterclaim for revocation under sect. 32, an order is made revoking the patent, or on an appeal the court makes an order of revocation or confirms

an order of revocation made by the Comptroller and an appeal is brought to the Court of Appeal, the notice of appeal must be served on the Comptroller. If before or subsequent to service and before the hearing the respondent decides not to appear on or not to oppose the appeal, he must serve notice of his decision upon the Comptroller and the appellant. The copy served upon the Comptroller must be accompanied by a copy of the petition or of the pleadings in the action or of the application and the filed affidavits. The Comptroller must then, within 14 days after receipt of the respondent's notice, serve the appellant with notice stating whether or not he intends to appear on the appeal, and in any case where the Comptroller gives such notice or in any other case with leave or if directed by the court, the Comptroller may appear upon the appeal and be heard in opposition. (Rules of Supreme Court (No. 2), 1938.)

- 171 **Beneficiaries' Administration Action.** In the judgment in a beneficiary's administration action, where the deceased died upwards of six years before the judgment, the following inquiry (unless otherwise expressly directed by the judge) is to be inserted in place of the usual account of the testator's debts—

“2. An inquiry whether there is any debt of the deceased's remaining unpaid.”

(Practice Direction, 2nd December, 1937.)

- 180 **Foreclosure and Redemption.** An originating summons for foreclosure or redemption of property within the district of any district registry may

be issued out of such registry. (Rules of Supreme Court (No. 1), 1937.) As to the parties to a foreclosure action, see *Griffith v. Pound* (1889), 45 Ch.D. 553; and *Westminster Bank Ltd. v. Residential Properties Improvement Co. Ltd. and Robinson*, [1938] 1 Ch. 639; [1938] W.N. 160; 54 T.L.R. 675).

217 Adoption of Children Act. Applications under this Statute may also be made to the County Court or to a court of summary jurisdiction:

219 Arbitration Act, 1889. Applications are now within the jurisdiction of a Master. (Rules of Supreme Court (No. 3), 1937.)

220 Arbitration Act, 1889. Motions under sect. 10 to remit an award, or under sect. 11 to remove an arbitrator or umpire, or to set aside an award, are heard by a single judge in court. (Order LIX, r. 39.)

220 Companies Act, 1929. Every petition (except a petition to sanction a compromise or arrangement under sect. 153) or summons (except summonses for facilitating reconstructions or amalgamations under sect. 154, or applications for meetings under sect. 153) are now brought or issued out of the Companies Court. A notice of motion and a petition to sanction a compromise or arrangement or a summons to facilitate amalgamations or reconstructions or for meetings may be issued or brought either out of the Chancery Division or the Companies Court (Rules of Supreme Court (No. 3), 1937.)

236 Law of Property Act, 1925. This power will now only apply to cases where the restraint has not

been removed by the Law Reform (Married Women and Tortfeasors) Act.

240 Married Women's Property Act. These applications are unaffected by the Law Reform (Married Women and Tortfeasors) Act. Applications as to property are now determined by the Master. (Rules of Supreme Court (No. 3), 1937.) Appeal lies to a Divisional Court.

242 Patents and Designs Acts. See also 162.

263 Divisional Courts. The following proceedings (in addition to any other proceedings directed by Rules of the Supreme Court to be so heard) are heard by divisional courts—

(a) applications for an order of mandamus, an order of prohibition or an order of certiorari;

(b) proceedings under sect. 9 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, or under sect. 84 of the Local Government Act, 1933, in respect of any person acting or claiming to act in an office to which he is not entitled;

(c) applications for the issue of a writ of habeas corpus;

(d) proceedings for attachment for contempt of court in the cases specified in Order LIX;

(e) proceedings relating to Parliamentary and Local Government election petitions, including applications to the High Court under sect. 23 of the Corrupt and Illegal Practices (Prevention) Act, 1883, and sect. 20 of the Municipal Elections (Corrupt and Illegal Practices) Act, 1884;

(f) appeals to the High Court from any inferior court;

(g) special cases under sect. 11 of the Quarter Sessions Act, 1849, or sect. 29 of the Local Government Act, 1899;

(h) proceedings directed by any Act to be heard by the High Court and in which the decision is final.

This Rule (Order LIX, r. 1) came into operation on 1st January, 1939, and has effect subject to any Rule giving jurisdiction to a single judge (whether in court or in chambers) to hear any proceedings and does not take away any existing power of a single judge to hear such proceedings.

265 Moneylenders' Actions. Where an action for the recovery of money lent by a moneylender or for the enforcement of any agreement or security relating to any such money is brought by the lender or an assignee, the endorsement must state, in addition to any other particulars, the fact that at the time of making the loan or contract the plaintiff or (in an action by an assignee) the original assignor was a licensed moneylender, and if the writ is specially endorsed (under Order III, Rule 6) must also state—

(a) the date on which the loan was made;

(b) the amount actually lent to the borrower;

(c) the rate per cent per annum of interest charged;

(d) the date when the contract for repayment was made;

(e) the fact that a note or memorandum of the contract was made, and was signed by the borrower;

(f) the date when a copy of the note or memorandum was delivered or sent to the borrower;

(g) the amount repaid;

(h) the amount due but repaid;

(i) the date upon which such unpaid sum or sums became due;

(j) the amount of interest accrued due and unpaid on every such sum.

(Rules of Supreme Court (No. 2), 1936.)

266 Statement of Claim. As to time for delivery, see Supplement, p. 163.

268 Writ Actions. In any proceedings (tried in any court of record) for the recovery of any debt or damages, the court may order payment of interest on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment, but this does not authorise the giving of interest upon interest, or apply to any debt upon which interest is payable as of right whether by agreement or otherwise or affect the damages recoverable for the dishonour of a bill of exchange (Law Reform (Miscellaneous Provisions) Act, 1934, sect. 3). The endorsement of the writ should show the grounds on which interest is claimed. In actions on bills of exchange and promissory notes there is power under sect. 57 (3) of the Bills of Exchange Act, 1882, to give or withhold interest claimed, but interest may be claimed and given down to the date of the judgment.

272 Order XIV. New Procedure abolished.

- 273 Moneylenders' Actions.** As to endorsement of claims in moneylenders' actions, see Supplement, p. 177.
- 275 Costs.** For amended Table consequent upon restoration of statutory increase of $33\frac{1}{3}$ per cent, see Supplement, p. 103.
- 280 New Procedure Rules.** Order XXXVIII*a* revoked as from 11th January, 1938. (Rules of Supreme Court (No. 3), 1937.)
- 296 Payment into Court.** For a case as to the effect of a communication to the judge (by inadvertence or otherwise) that there has been a payment into court, see *Millenstead v. Grosvenor House (Park Lane) Ltd.*, [1937] 1 K.B. 717.
- 297 Payment out of Court.** Notice of acceptance must be given within seven days of the receipt of notice of payment in, or where more than one payment into court has been made, within seven days of the receipt of notice of the last payment in. (Rules of Supreme Court (No. 2), 1936.)
- 299 Notice of Trial.** See p. 166.
- 313 Appeals from Inferior Civil Courts.** As from 1st January, 1939, all appeals from inferior courts of civil jurisdiction (except appeals which lie to the Court of Appeal or are assigned to the Chancery Division or the Probate, Divorce and Admiralty Division) are heard by a divisional court of the King's Bench Division. Appeals are brought by notice of motion, which must state the grounds of the appeal and whether all or part only of the judgment order or decision is complained of. The notice must be served on all parties directly

affected by the appeal and on the registrar of the court from which the appeal is brought, and there must be at least 8 clear days between service and the day named for hearing. Notice must be served and the appeal entered within 21 days from the date of the judgment, order or decision complained of, calculated from the time when the judgment or order was signed, entered or otherwise perfected, or the decision given. The appeal does not operate as a stay of proceedings, unless the inferior court so orders, or unless, within 10 days of the judgment, order or decision, the appellant deposits a sum fixed by the inferior court, not exceeding the amount of the money or the value of the property affected, or gives security therefor.

On the appeal the High Court may draw all inferences of fact which might have been drawn in the inferior court and may give any judgment or decision, or make any order which ought to have been given or made by the inferior court. An appeal cannot succeed on the ground merely of misdirection or improper reception or rejection of evidence unless in the opinion of the High Court, substantial wrong or miscarriage has been thereby occasioned in the inferior court. If the notes of the judge of the inferior court are not produced, the appeal may be heard and determined upon such other evidence of what occurred in the inferior court as the High Court may deem sufficient. The High Court may amend the grounds of appeal or make such other order, on just terms, to ensure the determination on the merits of the real questions in controversy. Subject as above, the Rules applicable to appeals

from the High Court to the Court of Appeal, apply. (Order LIX, rr. 34, 35, and 36.) Appeals are entered in the Divisional Court List.

- 315 Appeal.** Under Order LVIII, r. 15, and Order LXIV, r. 7, the Court of Appeal has a wide power to enlarge, on terms, the time for appealing. Application should, however, be made as promptly as possible according to the circumstances, otherwise the successful appellant may find himself deprived of costs. For an example, see *Kervorkain v. Burney* (1937), 54 T.L.R. 19.

Paragraph (k) repealed by County Courts Act, 1934.

- 320 Security for Costs of Appeal.** Non-payment of the costs of an action in the court below is not of itself sufficient ground for an order for security. (*Hills v. London Passenger Transport Board*, [1937] W.N. 339.)

- 322 Application to Court of Appeal for Leave to Appeal to the House of Lords.** (1) The application (unless made when judgment is delivered) is to be made on notice to the other side, who will be entitled in any case to be heard against the application.
- (2) Where leave is given to a party to appeal, the order will grant leave to the other parties to present cross appeals. (Practice Note, 1938.)

VOLUME IX
MAGISTERIAL PRACTICE
PARTNERSHIP PRACTICE
PROBATE PRACTICE

VOLUME IX

Part I

MAGISTERIAL PRACTICE

47 **Quarter Sessions.** By the Administration of Justice (Miscellaneous Provisions) Act, 1938, the jurisdiction of a court of quarter sessions (where presided over by a legally qualified chairman) has been extended (in addition to its present jurisdiction) to cover the following offences—

(1) offences under sect. 38 of the Chelsea and Kilmainham Hospitals Act, 1826;

(2) offences under sect. 49 of the Army Prize Act, 1832;

(3) offences under sect. 14 of the Malicious Damage Act, 1861;

(4) offences under sect. 60 of the Offences against the Person Act, 1861;

(5) offences under sect. 13 of the Stamp Duties (Management) Act, 1891;

(6) offences under sect. 11 of the Criminal Law Amendment Act, 1885;

(7) offences under sects. 2, 3, 4, 5, and 6 of the Perjury Act, 1911;

(8) offences under paragraph (a) of sub-section (2) of sect. 2 of the Forgery Act, 1913, in relation to any document, being an accountable receipt, where the amount of the money or the value of the property in respect of which the offence is committed does not exceed £20, offences under sect. 4 of that Act, and offences under that Act which would, before the passing

of that Act, have constituted offences under sect. 13 of the Stamp Duties (Management) Act, 1891;

(9) offences under sect. 36 of the Criminal Justice Act, 1925;

(10) offences under the Coinage Offences Act, 1936, other than offences under paragraph (a) of subsect. (1) of sect. 1; sect. 2, subsects. (1) and (2) of sect. 9; and sect. 10 of that Act;

(11) conspiracies to commit offences punishable on summary conviction;

(12) offences consisting of the forgery of any document or thing, being offences liable on indictment or alternatively by a court of summary jurisdiction, except offences under sect. 1 of the Official Secrets Act, 1920.

Generally as to powers of quarter sessions and the appointment of a legally qualified chairman and the powers of the court in his absence, see Administration of Justice (Miscellaneous Provisions) Act, 1938, which came into operation on 1st January, 1939.

48 Indictment. The joinder of two counts in one indictment is undesirable in a case of murder. (*R. v. Davis* (1937), 26 Cr.App.R. 15; 184 L.T.Jo. 107.) Public justice requires that every crime shall be punished when once committed, and that persons who conspire to conceal a crime are guilty of an offence, although no proceedings have actually been taken. (*R. v. Sharpe*; *R. v. Stringer*, [1938] W.N. 29; 102 J.P. 113.)

55 Appeals. Where justices learn that a private prosecutor does not intend to appear on an appeal to Quarter Sessions, it is their duty to be represented

on the appeal to explain the reasons for their decision and give assistance to the court. (*R. v. Kent Justices, Ex p. Metropolitan Police Commissioner* (1936), 52 T.L.R. 78.)

- 61 **Case Stated.** A copy of the case (and of the notice of appeal) must be sent to the other side *before* the case is transmitted to the High Court. (Summary Jurisdiction Act, 1857, sect. 2; *Duke of Atholl v. Read*, [1934] 2 K.B. 92; 50 T.L.R. 264.)
- 81 **Matrimonial Jurisdiction.** See also Summary Procedure (Domestic Proceedings) Act, 1937.
- 85 **Desertion.** As to abnormal sexual acts and constructive desertion, see *B. v. B.*, [1935] P. 80; 152 L.T. 419; 99 J.P. 162.
- 89 **Order for Maintenance.** Where a maintenance order is made whereby a husband is ordered to pay a certain sum weekly to his wife, he is entitled to deduct income tax. (*Clack v. Clack*, [1935] 2 K.B. 109; 152 L.T. 588.)

Adultery. If during the pendency of proceedings in the High Court on an issue of adultery, proceedings in a court of summary jurisdiction under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, raise the same issue, the summary proceedings should be stayed pending the decision of the High Court, so as to avoid a conflict of jurisdiction (*Knott v. Knott*, [1935] P. 158; 153 L.T. 256), and during the pendency of the petition, no order for maintenance should be made. (*Higgs v. Higgs*, [1935] P. 28; 152 L.T. 24.)

- 99 **Married Women. Non Access.** A separation deed also annuls the presumption of legitimacy. (*Stafford v. Kidd*, [1937] 1 K.B. 395; 83 L.Jo. 26.)

Further as to proof of non-access by a husband in affiliation proceedings, see *Bowen v. Norman*, [1938] 1 K.B. 689; [1938] W.N. 41; 54 T.L.R. 342, distinguishing *Stafford v. Kidd*, *supra*.

- 105 **Appeal.** If an order is quashed by quarter sessions, a second application to petty sessions cannot be made. (*R. v. Glynne* (1871), 7 Q.B.D. 16; *R. v. Howard, ex p. Da Costa*, [1938] W.N. 202; 54 T.L.R. 825.)

- 113 **Occasional Licences.** "Summer time" is not a special occasion. (*R. v. Sussex Licensing Justices; Ex p. Bubb*, [1934] W.N. 117.)

Jurisdiction Recovery of Possession of Small Tenements. Distinct from criminal jurisdiction is the jurisdiction conferred by the Small Tenements Recovery Act, 1838. Under sect. 1 where the tenant of any house, land, or corporeal hereditament, held at will, or for any term not exceeding seven years, without rent, or at a rental not exceeding £20 a year without a fine having been reserved, shall have ended by legal notice to quit or otherwise and such tenant or (if such tenant do not actually occupy the premises, or only occupies part thereof) any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver the possession of the premises, or of such part

thereof respectively, the landlord or his agent may cause the person so neglecting or refusing to quit to be served with notice signed by the landlord or his agent, of his intention to apply to the justices at the expiration of seven days from the service of the notice, to recover possession under the Act.

The notice of the application must be in the form prescribed and must (except as stated below) be served personally, or by leaving the same with some person being in, and apparently residing at his place of abode, *and the person serving must read over the notice to the person served, or with whom it is left, and explain the purport and intent of the notice.* If the person holding over cannot be found, or his place of abode is not known or admission cannot be obtained, the notice may then be posted on some conspicuous part of the premises (sect. 2).

These provisions as to service are important and must be strictly proved at the hearing of the application.

If the application is granted, a warrant for possession will be issued. This warrant provides that possession be given not less than twenty-one or more than thirty days from the date of the warrant (sect. 1). The warrant is prepared and issued by the justices' clerk and is executed by the police. This jurisdiction is not affected in any way by the County Courts Act.

When contemplating proceedings under this Act the provisions of the Rent and Mortgage Interest Restrictions Acts, the Landlord and Tenant Act, 1927, and the National Insurance Act, 1924, (sect. 102) should be considered.

Part II

PARTNERSHIP PRACTICE

No alterations since publication of the Original Volume.

Part III

PROBATE PRACTICE

- 1 **Executors.** As to the number of persons to whom a grant can be made, see Judicature Act, 1935, sect. 160 and *Re Holland* (1936), 155 L.T. 417; 53 T.L.R. 3.

- 12 **Administration.** Where a grant of administration is made to a trust corporation, the court may give the corporation power to charge on the usual scale. (*Re Young deceased*, [1934] W.N. 106; 151 L.T. 221.)

- 13 **Administration.** The last sentence of the second paragraph on this page should read as follows—
 One surety only is required where the gross value of the estate is under £50 or where a wife died before 1926 and the proposed administrator is the husband of the deceased, or the husband's representative or attorney. The administrator is always the first person named in the bond.

APPENDIX III

FEES

Delete Fee No. 32 and insert—

32. For a photographic copy or extract of a will deposited in the Principal Probate Registry:
 For each photographic sheet

(a) If of foolscap size	1s. 6d. Adhesive
(b) If over foolscap size	3s. 0d. Adhesive

- 32b. For a photographic copy of the record of the re-sealing in England of a Scottish Confirmation:—

For the first copy on each application . . . 2s. 0d. Adhesive

For each subsequent copy on the
same application 1s. 0d. Adhesive

Note. If the copy is to be sealed with the small seal of the Court, no further fee is payable for the seal.

36. After “letters of administration” add “or of the record of the re-sealing in England of a Scottish Confirmation.”

VOLUME X
TRUSTS, TRUSTEES AND TRUST
ACCOUNTS

VOLUME X

TRUSTS, TRUSTEES AND TRUST ACCOUNTS

Income. Shares received by trustees in satisfaction of arrears of dividend are treated as income and belong to the person who would have been entitled to the arrears of dividend if they had been paid. (*In re MacIver's Settlement*, *MacIver v. Rae* (1936), 52 T.L.R. 25.)

- 10 **Fees.** As to the incidence of the income fees of a corporate trustee between the annuitant and the persons entitled to the income of the residuary estate, see *In re Hulton*, [1936] 1 Ch. 536; W.N. 190, and the income and capital fees when there are settled legacies, see *In re Roberts*, [1937] 1 Ch. 274; 156 L.T. 213.

Further as to the income fees of paid corporate trustees, see *Re Godwin; Coutts & Co. v. Godwin*, [1938] 1 Ch. 341; [1938] W.N. 40.

- 54 **Mining Leases.** But see Coal Act, 1938.

- 97 **Investments.** As to the power of trustees to concur in schemes of arrangement, see *In re Walker's Settlement. Royal Exchange Assurance Corporation v. Walker*, [1935] 1 Ch. 567.

- 173 **Property Undisposed of by Will.** See also *Re Sanger, Taylor v. North* (1938), 82 S.J. 950.

- 187 **Allhusen v. Whittell.** Contingent legacies are excluded from this rule, and the whole of the legacy

duty payable on contingent legacies given free of duty is a charge on the capital of the trust. (*In re Fenwick's Will Trusts*, [1936] 1 Ch. 720; W.N. 219.)

194 **Apportionments.** Tithe redemption annuities are payable by the tenant for life alone without any apportionment as between him and the remainderman. (*Re Leicester's Settled Estates*, [1938] W.N. 294; 54 T.L.R. 1076.)

195 **Apportionments.** In the absence of special circumstances, the Apportionment Act does not apply to a case where trustees on the death of a tenant for life sell stocks cum dividend, and the estate of the tenant for life has no claim to an apportioned share of the amount by which the price of the stocks was increased by the inclusion of the dividend. (*In re Firth*, [1938] 1 Ch. 517.)

